



## Legislation - Hospitality

This is about the legislation relating to the hospitality industry, including food hygiene and Licensing. These laws have been arranged in alphabetical order for ease of use.

C

### The Consumer Protection from Unfair Trading Regulations 2008

Requires consumers to be fully informed about goods and services including descriptions of alcoholic drinks and indications of prices charged in licensed premises. The best way to ensure that customers are given the required information is by the use of detailed menus or clearly displayed price lists that indicate the following:

- accurate product descriptions, including alcoholic strengths where appropriate
- the price, inclusive of VAT
- the quantity of drink served, where appropriate
- any compulsory additional service charge
- any compulsory minimum charge per customer.

Names used to describe drinks on price lists, menus, etc should be accurate. For example, brand names such as 'Bacardi' and

'Coke' should not be used if other brands of white rum and cola are actually served.

Advertising signs on beer pumps and optics must accurately indicate the brand of drink being served and need to be checked regularly to ensure they have been changed if a different drink is being served from them.

Not providing the customer with all or part of the information necessary, or give misleading information, this may be regarded as an unfair trading practice and constitute an offence.

### Confined Spaces Regulations 1997

A small cellar below ground in which gas cylinders for a beer or drink dispense system are stored, is the principal hospitality industry situation to which the Confined Spaces Regulations 1997 apply. The specified risks are loss of consciousness or asphyxiation from gas, fume, vapour or the lack of oxygen and injury from fire or explosion. Risk assessments must be carried out and emergency arrangements must be in place.



## Food Hygiene Regulations 2006

This is a new EU regulation and it came into force on the 1st January 2006. This regulation revoked a tranche of regulations (although the content of the regulation

largely remains the same) such as Food Safety (General Food Hygiene) Regulations 1995 and Food Safety (Temperature Control) Regulations 1995.

For Hoteliers, restaurateurs and caterers familiar with the 1995 regulations, the three changes of most significance from January 2006 are:

- Training of food handlers.
- HACCP food safety management, which must be documented.
- Two new enforcement measures have been added to the current ones, they are remedial action notices and detention notices.

## Food Information for Consumers Regulations (No 1169/2011)

EU food labelling laws have changed. From 13th December 2014, all food businesses will need to provide information about the allergenic ingredients used in food sold or provided by them. This applies to businesses which are providing food sold pre-packed, pre-packed for direct sale and non-pre-packed (loose), including wine so it affects food sold in restaurants and takeaways. Trading Standards have been enforcing the NEW regulations from December 2014 and non-compliance could lead to prosecutions.

Any establishment or supplier providing food products will need to label products ensuring that food allergens are listed and highlighted.

What types of food allergies are there?

There are currently 14 main food allergens which need to be declared:

1. Cereals containing gluten namely wheat (such as spelt and Khorasan wheat, barley, rye and oats).
2. Soya.
3. Crustaceans like prawns, crab, lobster and crayfish etc.
4. Eggs.
5. Molluscs such as clams, scallops, quid, mussels, oysters and snails etc.
6. Milk.
7. Fish.
8. Celery.
9. Peanuts. Although peanuts are legumes (like beans, peas, chickpeas) rather than nuts. Allergen labelling law states peanuts are one of the 14 allergens which must be declared on labelling, and nuts (collectively - e.g. Brazils, Hazelnuts) are another. You may react to one or the other or both.
10. Mustard.
11. Lupin.
12. Sesame.
13. Tree Nuts (such as walnut, hazelnut, almond, pecan, brazil, pistachio, cashew, macadamia or queensland nuts)
14. Sulphur dioxide or sulphites (where added and is >10mg/kg in the finished product. Often found in dried fruit and wine).

This is enforced in England, Scotland, Wales and Northern Ireland, each country has its own version which is the same in most respects.



## Food Premises (Registration) Amendment Regulations 1997

This regulation replaces the requirement under the now revoked Food Premises (Registration) Regulations 1991 as amended and requires that if you run a food business you must register with the local authority.

Those premises that were registered under the old regulations need not re-register under the new regulations. There are no exemptions to the requirement to register except those businesses that are subject to approval under this regulation.

A 'Food Business' is defined as carrying out any of the activities related to any stage of production, processing and distribution of food whether for profit or not and whether public or private. This includes restaurants, hotels, cafes, pubs, shops, school kitchens, office canteens, warehouses, market stalls, catering vehicles, ice cream and delivery vans, guest houses and residential homes.

New food businesses must register at least 28 days before trading commences, using the form provided by their local authority. There is no registration fee, and an application cannot be refused. Where a business has two or more premises, a separate registration must be made for each one, to the local authority of the area in which the premises are located. Any changes of proprietor, or the nature of the business, or the address at which moveable premises are kept, must be notified to the local authority, before or on the date of the change or within 28 days.

## Food Safety (General Food Hygiene) Regulations 1995 (amended 1999, 2004)

In England, Scotland and Wales these regulations have been replaced by the:

- [Food Hygiene \(England\) Regulations 2005.](#)
- [The Food Hygiene \(Scotland\) Regulations 2005.](#)
- [The Food Hygiene \(Wales\) Regulations 2005.](#)

Anyone who owns, manages or works in a food business, apart from those working in primary food production such as harvesting, slaughtering or milking is affected by these Regulations. They apply to anything from a hot dog van to a five-star restaurant, from a village hall where food is prepared to a large supermarket, or to a vending machine.

The Regulations apply to all types of food and drink and their ingredients. But some businesses, generally manufacturers of products of animal origin, such as dairies or wholesale fish markets, follow their own product specific regulations. The regulations apply at all stages of food production except primary production which is covered by the Food Safety Act 1990.



As the proprietor of a food business, you must:

- Make sure food is supplied or sold in a hygienic way.
- Identify food safety hazards.
- Know which steps in your activities are critical for food safety.
- Ensure safety controls are in place, maintained and reviewed.

Controls do not have to be complex. There are systems that can be used by food businesses to ensure that hazards are identified and controls are in place. Hazard Analysis and Critical Control Points (HACCP) is one of a number of such systems.

The Regulations also cover the following aspects of food safety:

- *Rooms where food is prepared* - The siting, design and construction must aim to avoid contamination of food and harbouring of pests. It must be kept clean and in good repair so as to avoid food contamination. It must provide appropriate facilities for personal hygiene and all reasonable practicable steps to avoid the risk of contamination of food or ingredients must be made. There must be a hot and cold water supply and adequate arrangements for storage and disposal of waste.
- *Transport* – Container design must allow for them to be adequately cleaned and disinfected and they must be kept clean to avoid contamination.
- *Equipment* – Such as articles, fittings and equipment that can come into contact with food shall be made of such materials and maintained so that they, and the surrounding areas, can be kept clean and where necessary disinfected.



- *Food waste* - Adequate facilities and arrangements must be made to allow proper hygiene.
- *Water supply* - There must be an adequate supply of drinking water.
- *Personal hygiene* – Food handlers must wear suitable clean and where appropriate protective clothing. Everyone in a food handling area must maintain a high level of personal cleanliness. No one suffering from or a carrier of a disease which could be transmitted through food should work in a food handling area.
- *Protection from contamination* – No raw materials or ingredients should be accepted if known or suspected of being contaminated and which would still be unfit after normal sorting or processing. At any stage of the business operation food must be protected from contamination likely to render it unfit for human consumption.
- *Training* – All food handlers must be supervised and instructed and/or trained in food hygiene matters to a level appropriate to their job.

The Regulations are much the same in each country and also provide for the following enforcement measures:

- Hygiene improvement notices.
- Hygiene prohibition orders.
- Hygiene emergency prohibition notices and orders.
- Remedial action notices and detention notices.

They also provide for the procurement and analysis of samples, powers of entry for authorised officers.

## The Food Safety (Temperature Control) Regulations 1995

Apply to all food businesses (unless involved only in primary production), and to each stage of the operation from preparation through to handling or offering for sale, or supply.

No food which is likely to support the growth of pathogenic micro-organisms or the formation of toxins shall be kept at a temperature above 8°C. The main exceptions are foods which:

- Have been cooked or reheated, are held for service or on display for sale and need to be kept hot in order to control the growth of harmful bacteria.
- Foods which for the duration of their shelf life, may be kept at ambient temperature with no risk to health.
- Food which has been canned or dehydrated or subjected to other processes to prevent the growth of pathogenic micro-organisms or the formation of toxins (but not once the hermetically sealed container is opened).
- Have to be ripened or matured at ambient temperatures (e.g. soft or mould ripened cheeses), but only for the ripening/maturing process.
- Are raw (e.g. meat, fish, vegetables) and intended for further processing (e.g. cooking) which will ensure they are fit to eat.
- The manufacturer has stated (e.g. on the label) can be stored at a higher temperature.

Limited periods outside temperature controls are acceptable:

- While the food is being kept for service or on display for sale, provided this is limited to not more than 4 hours, and the food has not previously been kept for service or display at a temperature above 8°C.
- To accommodate the practicalities of handling, e.g. moving from the delivery vehicle to storage, during preparation, defrosting of equipment, and in the event of equipment breakdown.

Food which has been cooked or reheated is held for service or on display for sale, and needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins, must not be kept at a temperature below 63°C. This does not apply to food which is kept for service or display for less than 2 hours and has not previously been kept for service or display.

Food offered as a prize or reward or given away at any entertainment or social gathering, at which the public are present, is also included.

The enforcement authorities in Scotland for the Food Safety Act 1990 and regulations made under the Act are the islands and district councils.

Prosecution of offences are brought in the Sheriff Court. The Food Safety (Temperature Control) Regulations 1995 are different in the following aspects:

1. Food must be kept in a refrigerator or refrigerating chamber or cool ventilated place, or at a temperature of above 63oC. This does not apply to food which is being prepared, is being cooled after cooking, under hygienic conditions, is exposed for sale, in order that it may be conveniently available for sale on the premises, it is reasonable to be kept otherwise and it may be kept at ambient temperature with no risk to health.
2. Food which has been cooked and is re-heated before service must be reheated to a temperature of not less than 82oC (unless this will harm the quality of the food).
3. Gelatine used in meat or fish dishes or the preparation of bakers' confectionery filling, must be brought to the boil immediately before use, or heated to not less than 71oC for 30 minutes. Any gelatine left over and not treated as waste, must be cooled as quickly as possible and kept cool.

Customers must be able to obtain information about any dishes or products you offer for sale which contains genetically modified (GM) soya and/or maize, and/or additives and/or flavourings produced from a genetically modified organism.

## Food Safety Act 1990

The Food Safety Act 1990 sets out general duties and responsibilities and provides a framework for regulations on more specific aspects of food safety including those which implement EC Directives. The Act applies to all catering and food businesses, whether they operate for a profit or not, carried out by a public or local authority, to all stages from transport, storage and preparation through to service, delivery or collection by the consumer, and to any premises (including vehicles, stalls or moveable structures) used for the purposes of a food business.

The term "food" refers to almost anything that is eaten, drunk or chewed, including water, articles and substances used as ingredients in the preparation of food and drinks (including ice), articles and substances of no nutritional value which are used for human consumption, or anything falling within this description, and chewing gum and other products of like nature and use. Food offered as a prize or reward or given away at any entertainment or social gathering, at which the public are present, is also included.



Any food commonly used for human consumption, found on premises used for the preparation, storage or sale of that food, is presumed to have been or to be intended for sale for human consumption, until the contrary is proved. The same applies to any article or substance capable or being used in the composition or preparation of food intended for human consumption.

It is an offence to make food harmful to health by adding any article or substance to the food, using any article or substance as an ingredient in the preparation of the food, abstracting any constituent from the food and subjecting the food to any other process or treatment with the intent that it shall be sold for human consumption. Account will be taken not only of the probable effect on the health of the person consuming that food, but the probable cumulative effect of consuming food of substantially the same composition.

It is an offence to sell, offer, expose or advertise for sale, or possess for the purpose of such sale or of preparation for such sale, any food which fails to comply with food safety requirements, i.e. which has been rendered injurious to health, is unfit for human consumption or is so contaminated that it would not be reasonable to expect it to be used for human consumption. Any food which is part of the same batch, lot or consignment is presumed to fail to comply with these food safety requirements, until the contrary is proved.

To protect the consumer an offence is committed if the food is not of the nature, substance or quality demanded by the purchaser.



It is also an offence to label, present, display or advertise food in a way which falsely describes the food or is likely to mislead as to the nature, substance or quality of the food.

Local authorities are responsible for enforcing the Act (the Food Standards Agency plays an increasingly important role). Environmental health officers (EHOs) enforce food safety; trading standards officers enforce consumer protection, such as labelling and food composition or contamination issues which do not pose an imminent risk to health. If there are reasonable grounds for believing that a food business is failing to comply with the Food Safety Act or regulations made under the Act, the officer may serve an improvement notice on the proprietor. Non-compliance is an offence. When the officer considers that serious breaches of food safety have occurred, or the works specified in an improvement notice have not been carried out, prosecution may follow, usually through a magistrate's court.

If the proprietor is convicted of the offence, and the danger to health still exists, the court may impose a prohibition order. This may apply to specified processes or treatments, or to the use of the premises or equipment for particular purposes, or more generally, for the purposes of any food business. It may also be imposed on the proprietor or manager of the premises personally, or the person entrusted with the day to day running of the business, or any part of it, prohibiting him or her from managing any food business, or a particular type of food business. A copy of the order must be displayed in a conspicuous place on the premises. The order remains in force until the authority certifies that the risk no longer exists, or a court lifts the order.



## General Food Regulations 2004

The General Food Regulations 2004 provide new enforcement powers to local authorities and the FSA in respect of the new obligations relating to food and food businesses, which apply from January 2005.

The main changes being that food businesses must keep records of their suppliers and businesses they supply to and make these records available on demand to competent authorities.

## Genetically Modified and Novel Food (Labelling) (England) Regulations 2000

The requirement to label dishes which contained additives and flavourings produced from a genetically modified organism followed about six months later, with the Genetically Modified and Novel Food (Labelling) (England) Regulations 2000, and comparable legislation in Scotland, Wales and Northern Ireland. These implemented EU Regulation 50/2000, which also brought sales to caterers within the GM labelling requirements (previously caterers had to rely on the goodwill of suppliers to know whether or not their products contained GM soya or maize), and established a one percent tolerance for "adventitious contamination" of non-GM produce.

When a dish or product you sell contains genetically modified soya beans or maize, or both and/or additives or flavourings, or both, produced from a genetically modified organism you must state this on menus, notices at the point of sale, or on tickets or labels attached to pre-packed foods.

On menus and notices, the statement can be given alongside each of the individual dishes and products affected. Alternatively, the dishes and products can be referred to a general statement by means of an asterisk or some such device. Another option, is to list under a separate statement those dishes and products which have a GM content. These statements should not be hidden in small print.

For food which is not sold pre-packed, there is an option to make a general statement on a notice or the menu that some of the foods sold on the premises contain GM ingredients, and further information is available from staff. There must be an established procedure for ensuring staff can answer customers' enquiries accurately. A general disclaimer that dishes and products might contain GM ingredients is not acceptable. Food sold in packaging which has an area of less than ten square centimetres need not be marked or labelled with GMO particulars (e.g. single portion packs of sauces or spreads) or products sold in indelibly marked glass bottles intended for re-use, which do not have a label, ring or collar.

The legislation in the other nations is comparable to that in England:

- [Genetically Modified Food and Novel Food \(Labelling\) \(Wales\) Regulations 2004.](#)
- [Genetically Modified Food and Novel Food \(Labelling\) \(Scotland\) Regulations 2000.](#)
- [Genetically Modified and Novel Foods \(Labelling\) Regulations \(Northern Ireland\) 2000.](#)

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### Hotel Proprietors Act 1956

Under the Hotel Proprietors Act 1956, hotels within the meaning of the Act, inherited all the rights and duties which previously attached to inns.

A hotel is: “An establishment held out by the proprietor as offering food, drink, and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided, and who is in a fit state to be received”.

Under the Act the proprietor of a hotel owes a duty to provide every traveller with reasonable refreshment at any time. Refusal, without a reasonable excuse, renders him or her liable to a fine. However, the proprietor need only supply such food and drink as is available and he or she may reserve refreshment for existing guests and those who have reservations.

Defences for refusal to provide refreshment include:

- The remaining food is held for existing guests.
- The traveller was not in a fit state to be received.
- The traveller appeared unable to pay.

A hotel also has a duty to provide every traveller with accommodation fit for habitation. If the owner refuses to do so without reasonable excuse, he or she may be fined and also sued for damages.

Defences for refusal to provide accommodation include:

- All accommodation is taken or booked.
- The traveller may cause annoyance to other guests.
- The traveller was not in a fit state to be received.
- The traveller appeared unable to pay (refusal to agree to credit card imprint being taken might be interpreted as appearing unable to pay).

Apart from these exceptions the requirement to provide accommodation is absolute.

A hotel is responsible for the reception and safe keeping of all reasonable items of a guest's luggage. This responsibility extends only to guests booked into and using the hotel for at least one night and it covers the period from midnight before the guest's stay to the midnight following.



A hotel may choose to accept responsibility for cars and any property left in them and by accepting a car parking fee, the hotel may well be assuming a liability specifically excluded by the 1956 Act.

A hotel's liability will always depend upon the circumstances but the following are the official legal guidelines:

- Where the loss, or damage to, the guest's property is caused by (a) act of God: (b) action of the Queen's enemies; (c) total negligence on the part of the guest, then the innkeeper incurs no liability whatsoever.
- Where the loss of, or damage to, the guest's property is caused solely by the negligence or wilful act of the innkeeper or the staff, or where the goods had been entrusted to the innkeeper for safe-keeping, or offered for safe-keeping but refused by the management, then the innkeeper will be fully liable to the full extent of the loss or damage.
- Where the loss of, or damage to, the guest's property is caused by some factor which does not fit exactly into either of the above categories, and the innkeeper has displayed the statutory notice in a conspicuous part of the premises near the main entrance or reception area, then the innkeeper will be liable to a limited amount. These limits are £50 per article, or £100 maximum per person, regardless of the number of articles. If the statutory notice is not adequately displayed at or near the reception desk or main entrance, the innkeeper will be liable to the full value of the property.

In general, if a hotel wishes to refuse to give accommodation to someone the safest reason to offer is that all accommodation is already booked for other guests.



The limit to liability does not extend to visitors using restaurants, bars or other facilities. Instead the normal laws of contract and negligence apply, and if a hotel sets out to limit such liability, it will have to show that such a term is reasonable within the Unfair Contract Terms Act.

All hotels are subject to the normal law of contract. A contract may be defined as “a legally binding agreement between two parties”. There are a number of conditions for a contract to be legal, but the principal ones are that an offer is made by one party, the offer is accepted by the offeree. Hotels, by definition, are premises that are used primarily for the lodging and sleeping of travellers who present themselves with or without prior arrangement. The premises should serve meals and refreshments within reasonable hours. A register of residents must be kept.

Protection is offered under the Irish Law ‘Hotel Proprietors Act 1963’, which means the owner of the hotel has the duty to:

- a. To receive all-comers (subject to reasonable grounds for refusal).
- b. To take reasonable care in relation to guests’ safety and that of the hotel premises.
- c. To receive guests’ property where sleeping accommodation has been engaged (e.g. a guest’s luggage or a guest’s car in the hotel car park). On the other hand, a hotel proprietor has a right to seize and hold guests’ property in the event of an unpaid bill, and may sell that property if the debt remains unpaid after six weeks.

A premises which classifies itself as a hotel must be entered into the register of hotels maintained by Fáilte Ireland. To do they must comply with the relevant Fáilte Ireland regulations which govern the physical criteria for the premises and by providing evidence that they also comply with regulations regarding planning, building controls, food hygiene and fire safety.



## Immigration (Hotel Records) Order 1972

This order requires that anyone offering accommodation for reward must keep a record of all visitors aged 16 or over who take accommodation for one night or more.

These records must be kept for at least 12 months. In the case of British, or Commonwealth visitors, or citizens of British Protectorates or those serving in UK or NATO armed forces, the information required is date of arrival and the name and nationality of each visitor.

The Order states that there is a legal requirement on guests to provide their full name and nationality. Where people do not give their real name it is considered that no action would be taken by the police if no criminal intent (e.g. to defraud) were present. It would appear also that it is not incumbent upon a hotelier to ensure that names given are real names. The legal term for a guest who falls outside of the above categories, is an “alien”, in this case the following extra information must also be recorded: number and place of issue of their identity documents such as a passport or registration certificate and on or before departure, the full address (if known) of their next destination.



Premises mean any place and include part of a premises as well as vehicles, vessels or moveable structures.



## Licensing Act 2003

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Licensing legislation goes back in one form or another for hundreds of years to meet the different needs and requirements of different periods.

The Licensing (Consolidation) Act 1910, as its name implies, consolidated much of the law on the subject then in force and made some modifications.

Several Acts followed, covering a number of different points, and in 1953 a new Licensing Act attempted to put right various anomalies which had arisen, but it was nevertheless to a large extent once again a consolidating measure. In 1961 there was the first major revision of licensing law for many years. This Act was the Licensing Act 1964 and in 2003 radical changes were made to the licensing of premises where alcohol is sold and consumed. These changes introduced the current Act, which is the Licensing Act 2003.

The key facts of the Licensing Act 2003 are:

- The new licensing system is administered by licensing authorities in each local authority.
- There are two new types of licence: the Premises Licence and the Personal Licence.
- The main provision of the Licensing Act 2003 was expected to be in force by autumn 2005.

Premises Licences - The key facts are:

- Premises being used for licensable activities need a Premises Licence.
- All licensable activities are covered in one licence for any venue.
- Information provided in the Operating Schedule will form part of the conditions of the Premises Licence.

A premises licence is defined by the Licensing Act 2003 as a licence that allows the use of specified premises for the carrying on of one or more 'licensable activities'. Licensable activities are:

- The sale by retail of alcohol.
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of a club.
- The provision of regulated entertainment.
- The provision of late-night refreshment.

The main piece of legislation that controls the sale of alcohol is the Licensing (Scotland) Act 2005.



The prescribed form of application may be obtained from the applicant's local council. The applicant must display a notice of the application in at least one place at or on the site of the premises concerned for at least 20 days.

The application must be accompanied by:

- The fee.
- Plans of the premises in scale.
- Consent forms signed by the Designated Premises Supervisor.
- The completed application forms and the operating schedule.

When a premises licence authorises the sale or supply of alcohol, there are only two mandatory conditions attached to all premises' licences:

1. Supplies of alcohol can only be made when a Designated Premises Supervisor, who is a personal licence holder, has been appointed in respect of the premises.
2. All sales of alcohol must be made or authorised by someone who is a personal licence holder.

The consumption of alcohol itself is not considered a "licensable activity" under the Licensing Act. Therefore "drinking-up time" (DUT) has no legal meaning and has disappeared. For many years ten minutes (and later extended to twenty minutes) was the legal dispensation which allowed the consumption of alcohol to continue after the official closing time, which in recent times meant that customers could still drink what they had already bought until 23:20, subject to the licensee's discretion. After that time consumption had to also stop.



With the end of standard permitted hours, this concession became irrelevant and there is no mention of DUT in the 2003 Act. Instead, applicants for premises licences can specify the maximum period (their “Opening Hours”) for which they wish to allow their customers to stay after the time at which the sale of alcohol ends (“the terminal hour”) within their Operating Schedule. Some licences do not specify opening hours at all, which allows an unspecified drinking up time, determined only by the licensee’s discretion. In contrast, some licensees call for “last orders” twenty minutes (or more) before the end of the opening hours specified on their premises’ licence.

From 1st April 2015 it is no longer necessary to renew a personal licence.

### Age restricted sales comes under the Licensing Act 2003

Age restricted products have a minimum age of purchase due to their potentially harmful nature.

Alcohol can only be bought, bought for, or consumed on licensed premises by customers who are 18 or over. It is an offence to supply alcohol to a customer who is under 18. 16 and 17-year-olds can drink beer, lager, wine or cider bought for them by someone accompanying them who is 18 or over when they are eating a meal in a restaurant, hotel or areas in a pub set aside for eating meals.

The age of young people is often very difficult to assess licensed premises need to have an age-verification policy ensure that young customers can prove their age. Often the use of an age-verification policy is a condition applied when a licence to sell alcohol is granted.

The Act applies to England and Wales.

In Northern Ireland, the situation is slightly different, in that there are a fixed number of licences for pubs and off-licences due to the surrender principle, whereby the granting of a licence for a new public house or off-sales is conditional on the surrender to the court of an existing licence.

### Licensing (Scotland) Act 2005

The Scottish Government is responsible for regulating the powers of Scottish local authorities and Licensing Boards in relation to licensing the sale of alcohol.

Licensing is the responsibility of Licensing Boards. Local Licensing Boards have wide discretion to determine appropriate licensing arrangements according to local needs and circumstances and their own legal advice.

This Act balances the rights of the majority of people who drink responsibly against the need to protect local communities from nuisance and crime associated with misuse of alcohol. It is intended to provide a clear and consistent underpinning for the alcohol licensing regime in Scotland based upon the five licensing objectives:

- Preventing crime and disorder.
- Securing public safety.
- Preventing public nuisance.
- Promoting and improving public health.
- Protecting children from harm.

In 2010, two further Acts that impact upon the licensing regime in Scotland were passed by the Scottish Parliament:

- Alcohol etc. (Scotland) Act 2010 – the Act introduces new mandatory conditions for premises and occasion licences, including conditions on minimum pricing of multi-packs, drinks promotions and age verification policies.
- Criminal Justice and Licensing (Scotland) Act 2010 – this Act in part ensures that Scottish licensing laws are robust.

In addition to the primary legislation laid out in the Licensing (Scotland) Act 2005; Alcohol etc. (Scotland) Act 2010; and the Criminal Justice and Licensing (Scotland) Act 2010; the licensing regime in Scotland is also affected by a range of secondary legislation.



### Occupiers Liability Act 1984

Under the previous Occupiers’ Liability Acts 1957 the occupier (e.g. a hotel proprietor) had a duty of care to all those lawfully entering the premises.

They must take reasonable care to ensure that the premises are fit for the purposes for which people are invited or permitted to be there. The 1984 Act alters this situation slightly by specifying the circumstances under which the occupier owes a duty.

The Act states that he owes a duty of care to another, not necessarily a lawful visitor, if:

- He is aware of a danger or has reasonable grounds to believe that it exists.
- He knows, or should know, that a person might be put at risk.
- The risk is one against which he might reasonably be expected to offer some protection.

So the occupier must take reasonable care to prevent injury from occurring under these circumstances.

The occupier may do this by giving warning of the danger concerned, for example by displaying notices or by discouraging people from incurring the risk, for example by erecting fences. This duty does not extend to anyone who willingly accepts the risk of injury.

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### Pressure systems and Transportable Gas Containers Regulations 1989

Equipment and systems which use steam, gas or other fluids under pressure greater than 0.5 bar above atmospheric pressure - such as high pressure steamers, boilers, cookers and fryers, some espresso and beverage machines are subject to the Pressure Systems and Transportable Gas Containers Regulations 1989. These impose safety measures on the makers and suppliers of high pressure equipment and gas cylinders, on those who refill gas cylinders, on the installers of high pressure systems and equipment and those who inspect, repair or maintain them and in premises where such equipment is used, on the employer.

### Pressure Systems Safety Regulations 2000

Cover the safe design and use of pressure systems. Its aim is to prevent serious injury from the hazard of stored energy (pressure) as a result of the failure of a pressure system or one of its component parts

### Price Marking (Food and Drink) Order 2003

The order requires price lists to be displayed in a way in which they can be clearly seen. The basic law relating to price lists is as follows:

- If there are 30 items or less of food or drink other than wine on a menu or drink list, the prices of all items must be shown; otherwise it is enough to show the prices of 30 selected items.
- If a menu or drink list has more than 30 items (other than wine) and soft drinks are for sale, the prices of five soft drinks must be included. If fewer than five items are for sale, prices must be given for the actual number.



- If a menu or drinks list has more than 30 descriptions of food and drink (excluding wine), divided in anyway into categories (such as soups, fish, entrees, drinks etc) five items per category must have price indications.
- If there are fewer than five items in a category the actual number must have price indications.
- If soft drinks are for sale price indications must be given for five items or the actual number if less than five.

There are separate obligations in relation to listing wine to be served at the table to drink with a meal.

- If there are five wines or less on the list the price of each must be shown otherwise a price indication should be given for five wines.

In addition to the above requirements:

- The price of every fixed meal must be displayed. Where food or drink of different descriptions are for sale together as a fixed meal, individual items contained in the meal need not be priced unless they are available separately. Thus in the case of sandwiches the prices of all types of filling must be displayed, but not necessarily the price of all possible combinations.
- Price lists do not need to be displayed if the price has been agreed in advance.
- All prices must include VAT and any extra charges, such as cover or service charges, must be indicated.
- Any minimum price or charge must be shown, at least as prominently as the price of food it relates to.
- The price of food must be given by description unless it is to be sold by quantity or weight. Any different prices must be shown for items sold by other quantities or weight unless it is directly proportionate to the one given.
- Where an indication is given that a particular food or drink is for sale generally (as opposed to only during a specific day or period) an indication of the price of that food must be withdrawn as soon as is practical to do so, if the food or drink ceases to be available.



- The price must be displayed at or near the entrance to the premises in the case of restaurants or bars where the food is consumed before payment is made.
- For self-service style operations, takeaways and premises where payment is made before the food and drink is supplied; price lists must be displayed close to where the customer chooses his food.

For contravention of any of the pricing legislation, penalties vary according to the offence and the court imposing the penalty.

### T Tourism (sleeping accommodation price display) Order 1977

Hotels are required by the Tourism (Sleeping Accommodation Price Display) Order 1977 to display their tariffs in a prominent position in the hotel entrance or reception area. The notice must show:

- The price of a bedroom for one person where all rooms are the same price, or the maximum and minimum of the price range where rooms are offered at different prices.
- The price or prices (as in 1 above) of rooms for two persons.
- The price or prices (as in 1 above) for other types of rooms.
- Whether the price is inclusive of VAT, and if not the prices displayed must show the amount of VAT in each case.
- If a service charge is made, the price displayed must include the service charge.
- If meals are included in the price, this fact must be stated.

These are the legal requirements. A hotel may add further information if it wishes so long as it does not detract from the legal requirements.



### Weights and Measures (Intoxicating Liquor) Order 1988

Certain alcoholic drinks must be sold and served in quantities that comply with legal requirements. These apply to beer, lager, cider, gin, rum, vodka, whisky, wine and fortified wines, such as port and sherry.

There are no specific requirements as to the quantities that any other drinks have to be served in unless it is stated on a menu or price list.

Draught beer, lager and cider must be served in one of these quantities:

- 1/3 pint
- 1/2 pint
- 2/3 pint
- multiples of 1/2 pint

These measures do not apply when beer, lager or cider is mixed with other drinks but the requirements regarding measuring the drink as a whole should still be followed e.g. pint of shandy.

An automatic metering system or glasses of a relevant quantity should be used to measure draught beer, lager or cider. The equipment and glasses should be 'Government stamped'; to guarantee the accuracy of the quantity served.

Glasses used to measure and serve draught beer, lager and cider can be either brim measures (where they need to be filled to the top of the glass) or lined glasses (where there is space above the quantity line to allow for drinks with a frothy head). The drinks should be served to the required level, depending on the type drink e.g., ciders is not usually served with a frothy head. If customers consider that the amount of head on a drink is excessive they can ask for the glass to be topped up to a reasonably acceptable level.





The quantity of wine by the glass served must be clearly indicated to customers on menus, price lists or on a displayed notice.

Wine served in carafes should be in one of these quantities:

- 250 ml
- 500 ml
- 750 ml
- 1 litre

Fortified wine such as port or sherry must be sold in either 50 ml or 70 ml quantities (or multiples thereof) and the customer must be informed which quantities are being used.



If automatic half-pint meters are used, the glasses should be slightly bigger than the amount served to allow for any frothy head. These glasses should not be stamped or have a particular quantity marked on them as this could cause customer doubt over the amount they are being served. The allowable accuracy of stamped meters and glasses is different and a metered pint of beer e.g. the beer served from a metered pump may not always come up to the line on a stamped pint glass.

Beer, lager and cider can be sold in jugs or pitchers as long as:

- the quantity is made known to the customer
- the quantity is a multiple of a half-pint
- stamped equipment, measures or glasses are used to determine the amount served.

Gin, rum, vodka & whisky can to be served by the glass in one of these quantities:

- 25 ml
- 35 ml
- multiples of 25 ml or 35 ml

The quantity served must be determined using 'Government stamped' automatic measuring devices such as 'optics' or 'thimble' measures, this guarantees that the quantity served will be accurate.

Optics should not have anything obscuring the measuring chamber so customers can see it is full before it is used and the measuring chamber should be allowed to fully refill before another measure is dispensed.

Bottle-top pouring devices attached to spirit bottles should not be used there are not legally accurate and only for use in making cocktails. Thimble measures must be filled to the brim.

Wine by the glass must be sold in the following quantities:

- 125 ml
- 175 ml
- multiples of 125 ml or 175 ml



Certain alcoholic drinks must be served in quantities that comply with legal requirements.