



Licensing (Scotland) Act 2005

Off Sales Guide

For

Licence Holders and

Designated Premises Managers

This Information pack has been developed by the Licensing Standards Officer and Licensing Team of East Lothian Council to assist premises licence holders, Designated Premises Managers (DPMs) and their staff in running their premises in compliance with the 2005 Act.

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Licensing (Scotland) Act 2005

Licensing Standards Information Pack for Licence Holders

1. Introduction

The Licensing (Scotland) Act 2005 ('the 2005 Act') regulates the sale of alcohol in Scotland and is built around the five Licensing Objectives, which all licensed premises are expected to uphold:

- Preventing Crime and Disorder
- Securing Public Safety
- Preventing Public Nuisance
- Protecting and Improving Public Health
- Protecting Children and Young Persons from Harm

The operation of any retail business is challenging and means a lot of hard work for everyone involved. While all commercial operations must comply with a wide variety of regulation, it is essential that anyone involved in the sale of alcohol understands all aspects of the legislation which applies to that type of business. It is a commercial activity where there is a lot of responsibility placed on all staff involved to ensure that the law is complied with to the highest possible standards at all times.

Failure to comply fully with the legislation and/or with the terms of your Licence can have a serious impact on your business.

This guide is intended to give you the basic information in relation to the legislation which affects the sale of alcohol from an on- sales premises. It is not the purpose of this document to provide legal opinion. Should you require this for any aspect of the operation of your business then you should consult with a solicitor with specialised knowledge of this subject.

This Pack and Internet Access

There is a presumption that those reading this pack will have access to the internet and links are provided where appropriate to the East Lothian Council website and other sites including guidance and legislation. If you have received this pack by email then click on the relevant quick links for access at the end of this document.

The Licensing (Scotland) Act 2005 can be accessed via

<http://www.legislation.gov.uk/asp/2005/16/contents>

2. Licensing Board Policy

The East Lothian Licensing Board oversees the alcohol licensing regime in granting licences and taking action where necessary to ensure compliance.

The 2005 Act requires that each Licensing Board publish a statement of its policy in relation to alcohol licensing in its area. The policy document is now linked to the Council Election Periods. It is important that all licence holders, staff and others who have an interest in alcohol licensing, take time to read this document, which can be found on the East Lothian Council website.

3. The Role of the Retailer

It is essential that, as someone involved in the sale or provision of alcohol, you understand the responsibility you have both to individual customers and to the wider community to ensure that you operate in a manner which achieves the highest possible standards of compliance with the law.

To do this involves a lot of hard work over and above that normally undertaken by most licence holders and staff but it is worth it to ensure that you can demonstrate that you are taking the business of selling alcohol seriously.

It can be difficult when there are a lot of changes to the legislation which applies to you as an individual or your business. If you are uncertain, please contact:

Licensing Standards Officer
Karen Harling
kharling1@eastlothian.gov.uk
01620 872478
07774432158

Please leave your name, number and a message for a call back.

4. The Role of the Regulators

Your premise can be visited at any time by the following persons who have a legal right of access to undertake inspections. Whilst these officers will always seek to work with you to ensure that your business is operating successfully, they also have significant legal powers and will take formal action where appropriate should you be found to be breaking the law.

A summary of some of the basic matters which will be checked by any of the officers mentioned below during inspections. There is also a single sheet version of this checklist at the back of the booklet at **Appendix 1**.

Licensing Standards Officers (LSO's)

The Licensing (Scotland) Act 2005 introduced the role of the Licensing Standards Officer (LSO) who are authorised under the Act and are appointed by East Lothian Council and have the following functions:

- Undertake inspections of premises to ensure that you are complying with the terms of your licence and any associated conditions – this includes checking training records, promotions, signage etc.
- Provide you with information and guidance
- Investigate complaints
- Provide mediation to resolve any disagreements or disputes
- Take formal action should there be continued or serious non-compliance.

Police Officers

Police Officers can visit your premises at any time for many of the same reasons as Licensing Standards Officer's. Indeed you may be visited jointly by officers from both organisations. The Police have different powers to those held by Licensing Standards Officers. A person who intentionally obstructs a Police Officer from entering a premises is committing an offence.

Environmental Health Officers

These officers are also appointed by East Lothian Council and have the following functions:

- They comment on new or provisional premises licence applications made in terms of the Licensing (Scotland) Act 2005. Comments would relate to food safety
- They will investigate complaints about food safety, health and safety and public health matters, including noise complaints
- They provide information and guidance, however should there be a serious or continued non-compliance then formal action may be taken

5. **The Premises Licence and Statutory Notices**

To sell alcohol to the public the premises used for such sales must be licensed. This section provides information on the premises licence and statutory notices required to be displayed on the licensed premises.

Premises Licence

To sell alcohol to the public there must be a premises licence in place. The premises licence, or a certified copy of it (not a photocopy)¹ must be kept at the premises under the control of the licence holder or the premises manager. It is worth noting that each licence has its own individual conditions.

The premises licence comprises –

- The licence
- The operating plan - this details how individual premises intend to operate
- The layout plan - this sets out where alcohol is to be sold and the general layout of the premises

Summary Premises Licence

The summary premises licence, or a certified copy of it (not a photocopy)¹ must be prominently displayed so as to be capable of being read by anyone frequenting the premises. Each page must be able to be viewed separately therefore it is best not to laminate or frame this part of your licence.

The summary premises licence comprises-

- The summary licence
- The premises licence conditions

It is an offence

- If your licence or a certified copy of it isn't kept on your premises and available for inspection
- If you fail to have the summary of your licence or a certified copy prominently displayed on the premises in a location visible to anyone frequenting the premises.

¹Section 55 of the 2005 Act provides that a certified copy of the premises licence is a copy that has been certified as true by; the Licensing Board; or Solicitor; or notary public. This does not mean a standard photocopy. The certified copy will be clearly marked as such. Should an amendment to these documents be required, then a variation of premises licence application must be made to the Licensing Board.

Statutory Notice

A notice in terms of Section 110 of the 2005 Act (at least A4 size) must be displayed at all times at each place on the premises where sales of alcohol are made; and in a position where it is readily visible to any person seeking to buy alcohol. A copy of this notice is attached in **Appendix 2**.

6. The Personal Licence-holder/DPM

Personal Licence

The 2005 Act introduced the personal licence which is a portable licence granted to an individual enabling him or her to sell alcohol at a premises licensed for the sale of alcohol. A personal licence has a term of ten years and must be renewed by the issuing Licensing Board prior to the tenth anniversary of issue.

Please note that any holder of a personal licence must undergo refresher training within 5 years. It is extremely important that you formally notify the relevant Licensing Board which issued your licence of any changes to your personal circumstances within the relevant timescales. This includes completion of your refresher training, changes to your address and any relevant convictions. You will receive direct communication from the Licensing Board about some of these matters but the onus is on you to make contact at other times. For further guidance please contact the licensing team – licensing@eastlothian.gov.uk

Designated Premises Manager (DPM)

Alcohol is not to be sold on any premises where there is no premises manager in place. Each premises manager must be the holder of a valid personal licence and can only be manager for one premise at a time. There is no requirement for the premises manager to be present on the premises at all times. However, all sales of alcohol must be authorised by them whether generally or specifically.

If a DPM changes or leaves, then the premises licence holder must advise the Licensing Board of this in writing within **seven days**. Once this notification has been made, the premises licence holder has a **six week** period to get a new DPM in place and notify the board that this has happened. If no notification is received within the seven day period the 6 week period will not apply and all sales of alcohol must cease.

7. Staff Training

All staff must complete the 2 hours mandatory staff training completed by either a personal licence holder or suitably qualified trainer. **Staff are not permitted to serve alcohol until this training is complete.**

Training Records

There must be training records for all staff involved in the sale of alcohol on the premises.

These records must be available for inspection on the premises at all times. They should be dated and signed by both the member of staff and the personal licence holder who conducted the training. An example of a staff training record can be found in **Appendix 3**.

8. Refusal Register and Incident Book

It is strongly recommended that a refusal log and incident book is kept at the premises that can be made available for Licensing Standards Officers or police to inspect. For all sales that are refused the following should be noted:

- Time and date
- Reason for refusal
- Description of person
- Staff member signature
- Premises manager signature

Any other incident details should also be recorded such as disorder, thefts and antisocial behaviour.

9. Alcohol Promotions

The Alcohol etc. (Scotland) Act 2010 was introduced on the 1st October 2011 and retailers must comply with all of the requirements relevant to the type of business they are operating.

The Alcohol Etc. (Scotland) Act 2010 can be accessed via:-

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

These are as follows:

(a) Minimum price of packages containing more than one alcoholic product

The price of such packages must be equal to or greater than the sum of the prices at which each product is sale. This provision only applies where each alcohol product in the package is available for sale separately on the premises.

Example: If a multipack (12 cans of lager 440ml) is sold on the premises for £9.00, then a single can could not be sold for less than £0.75.

(b) Variation of pricing of alcohol drinks including special offers

This provision brings Off Sales premises into line with On Sales premises in that any variation in the price of an alcohol drink must be maintained for seventy two hours from the start of the price variation.

(c) Restriction on supply of alcoholic drinks free of charge or at reduced price

This provision brings Off Sales premises into line with On Sales premises in that “quantity discounts” and similar promotions are not permitted for Off Sales premises. Examples of such promotions include:

- Buy one get one free
- Three for the price of two
- Five for the price of four, cheapest free
- Three bottles for ten pounds (where the cost of buying the individual products is more than ten pounds)
- Buy six get twenty % off

Location of drinks promotions

Currently, alcohol that is displayed for consumption off the premises (off sales) can only be displayed in:

- 1) a single area of the premises agreed between the Licensing Board and the premises licence holder and
- 2) a single area which is inaccessible to the public. These areas are known as “alcohol display areas”.

The 2010 Act provides that any off sales drinks promotion may take place only in the alcohol display areas or in a tasting room. Further, the 2010 Act also provides that a drinks promotion in connection with the premises cannot take place within an area extending two hundred metres from the boundary of the premises as shown on the layout plan.

The website providing guidance on this can be accessed via:-

<http://www.gov.scot/Publications/2013/06/8949/3>

10. Security / CCTV

Anyone who operates premises where alcohol is sold will, at some point, encounter difficult customers particularly when staff refuse to sell them any or more alcohol. It is essential that management have a risk assessment in place in relation to these matters and that all staff are aware of what action they must take in any given circumstances.

One of the best ways of demonstrating and recording the manner in which you operate your business is to install and use an effective CCTV system.

11. Remote Sale/Deliveries

The 2005 Act provides that the sale and delivery of alcohol through mail order or via the internet is a “Remote Sale” and the following rules apply in relation to this type of business.

Remote Sales

Section 63 of the 2005 Act provides that orders of alcohol, on an off sales basis, can only be taken between the statutory off sales licensing hours – 10:00am and 10:00pm. The despatch of the alcohol can only take place between 6:00 am and midnight.

Delivery of Alcohol

To deliver alcohol the following must be in place:

1. A day book recording the order kept on the premises from where the alcohol was dispatched; and
2. A delivery book or invoice carried by the person delivering the alcohol.

In addition the information required to be entered in the above is:

- The quantity, description and price of the alcohol; and
- The name and address of the person to whom the alcohol is to be delivered.

A sample written Delivery Policy is contained in **Appendix 5**.

Finally, in Scotland it is an offence to deliver alcohol to a person under eighteen years of age, unless that person works in a capacity involving alcohol deliveries.

Although not a legal requirement it should be clear that it is the responsibility of the premises licence holder to ensure an effective age verification policy is in place which the delivery person is aware of and practises for each delivery. Licensing Standards has produced a specimen Delivery Age Verification Policy which is attached at **Appendix 6** and it is suggested this document is used in a similar way as the premises Age Verification Policy document detailed below.

12. Age Verification Policy

The Alcohol Etc. (Scotland) Act 2010 introduced a new mandatory condition for all premises licences and occasional licences requiring an age verification policy on the premises in relation to the sale of alcohol. The law has set a minimum age of twenty five years for the policy where it appears to the person selling the alcohol that the customer may be under the age of twenty five years.

As a result of this change in the law, customers in any premises in Scotland licensed for the sale of alcohol, including pubs, clubs, restaurants, supermarkets and convenience stores may be asked to produce identification where they appear under the age of twenty five to prove that they are over the age of eighteen and can lawfully purchase alcohol.

The www.challenge25.org website provides information about the law and what you should do to make sure you comply, and provides a specimen Age Verification Policy. A specimen policy document is also produced at **Appendix 4**. This website also provides posters for display on the premises.

The Premises Licence Holder operates an 'Age Verification Policy', the terms of which require production of an acceptable proof-of-age document if you are in any doubt as to whether a person seeking to buy alcohol is less than twenty-five years of age.

Only the following documents are acceptable for proof-of-age purposes. *(Delete any of the forms of identification below which are NOT to be accepted as part of your company's 'Age Verification Policy')*

- **Passport**
- **European Union photo-card driving licence**
- **Ministry of Defence Form 90 (Defence Identity Card)**
- **Photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram**
- **A national identity card issued by a European Union member state (other than the United Kingdom), Norway, Iceland, Liechtenstein or Switzerland, or**
- **Biometric Immigration Document**

Members of staff should always ask for any form of proof of age to be handed to them for closer examination. If any person declines to do so, they should be refused service and asked to leave. Details of the incident should be recorded in the refusal log book.

If no such document is produced or if you have a suspicion that the document presented is not genuine, or has been tampered with or has been altered, then you must refuse that sale or refuse to authorise the sale, and consideration should be given to seizing such a document and reporting the matter to Police Scotland.

13. Alcohol Authorisation

The 2005 Act requires that every sale of alcohol is authorised either generally or specifically by the premises manager or another person who holds a personal licence. To ensure that the authorisation can be evidenced, it is recommended that the authorisation is made in writing. This is what is expected in East Lothian. A written authorisation should contain the following elements.

- The person(s) authorised to sell alcohol at any particular premises should be clearly identified.
- The authorisation should specify the acts which may be carried out by the person being authorised.
- There should be an overt act of authorisation, for example, a specific written statement given to the individual being authorised.
- There should be in place sensible arrangements for the personal licence holder to monitor the activity that they have authorised on a reasonably regular basis.

A specimen template for written authorisation is attached at **Appendix 7**.

Appendices

Appendix 1: Premises Checklist

Ensure that all documents listed and are available for viewing and inspection on your premises by Licensing Standard Officers and Police Officers.

Appendix 2: Section 110 Notice

Insert name of premises and display at every point of sale of alcohol (sales counter or bar area) on the premises. Consider laminating or framing notice.

Appendix 3: Training of Staff – Training Record

This training declaration should be completed by the premises manager or personal licence holder and the member of staff who has been trained. The completed declaration should be kept on the premises with staff training records.

Appendix 4: Age Verification Policy Staff Declaration

This policy document should be completed for each staff member by the premises licence holder or premises manager, then signed by the staff member and retained with training records.

Appendix 5: Written Delivery Policy

This policy is optional however would be good practice to complete and retain with the premises licence.

Appendix 6: Delivery Age Verification Policy Staff Declaration

This policy document should be completed for each staff member making deliveries by the premises licence holder or premises manager, then signed by the staff member and retained with training records.

Appendix 7: Authorisation to Sell Alcohol

This alcohol authorisation should be completed by the premises manager or personal licence holder and signed by each member of staff who is not a personal licence holder. The completed authorisation should be kept on the premises with staff training records.

Appendix 1 – Premises Checklist

LICENSING (SCOTLAND) ACTS 2005 & 2010

Inspection - Premises Checklist

The purpose of this note is to advise you of some of the main matters that a Police Officer/Licensing Standards Officer will check when visiting your premises

Name of Premises:.....

Premises Licence Holder:.....

Premises Manager:.....

Premises Manager Personal Licence current - Yes/No

<u>Requirement</u>	<u>Check</u>	<u>Action Required</u>
Display of Summary of Premises Licence	YES /NO	
Premises Licence available	YES /NO	
Operating Plan available	YES /NO	
Layout Plan available	YES /NO	
Children and Young Person Notice (on sales only)	YES /NO	
Section 110 Notice	YES /NO	
Age Verification Policy in place	YES/NO	
Staff Training Records	YES/NO	
Refusal Book	YES/NO	
<u>Best Practice</u>		
CCTV	YES/NO	
Satisfactory Security Arrangements	YES/NO	
Additional Comments	YES/NO	

Appendix 2 – Section 110 Notice

LICENSING (SCOTLAND) ACT

This notice is displayed in accordance with the provisions of Section 110 of the Licensing (Scotland) Act 2005

It is an offence for a person under the age of eighteen 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 eighteen.

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

Appendix 3 – Training of Staff – Training Record

Licensing (Scotland) Act 2005

Schedule 3, Paragraph 6

Training of Staff – Training Record

(Name _____)

The Act

Schedule 3, Paragraph 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.

Declaration

Trainee

I (_____) confirm that I have received the training required by the Licensing (Training of Staff)(Scotland) Regulations 2007.

(Signed _____)

Trainer

I (_____) confirm that I have provided the above named member of staff with the training required under the Licensing (Training of Staff)(Scotland) Regulations 2007 on (Dates or dates _____).

(Signed _____)

Where signatory is the holder of a Personal Licence issued under the Licensing (Scotland) Act 2005. Please insert the number and the name of Licensing Board which issued the licence here)

(_____).

Appendix 4 – Age Verification Policy

Premises Age Verification Policy

The Licensing (Scotland) Act, 2005 requires by virtue of mandatory condition that every premises operates an Age Verification Policy.

Extract from Mandatory Conditions

Age verification policy

9A(1) There must be an age verification policy in relation to the sale of alcohol on the premises.

(2) An "age verification policy" is a policy that 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).

The following Age Verification Policy will be applied to all sales of alcohol made on these premises

Name of premises:

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Address of premises:

--

Name of premises licence holder:

Designated Premises Manager:

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Any individual who appears to the person selling or serving alcohol to be under the age of **25 years** will, prior to any sale or service of alcohol taking place be asked to produce identification bearing their photograph, date of birth, and if relevant a holographic mark.

The Following documents are the only acceptable forms of identification at these premises.

- An EU Photo Card Driving Licence
- A Current Passport
- A Proof Of Age Card Bearing the PASS Hologram
- *(add from additional list of approved documents if required)*

Regular Customers Who have Previously Satisfied Age Verification Requirements

An individual who is a regular customer and who appears to be under 25 years of age **and** who has on a previous occasion produced, to a member of staff on duty at that time, satisfactory proof (one of the above documents) that they are over the age of 18 years may at the discretion of the member of the staff member be relieved of the requirement to produce identification and proof of age.

This discretion will only be applied where the staff member is certain that they have previously seen and examined an approved document from the above list and were satisfied that the individual is over 18 years of age

Appendix 5 – Written Delivery Policy

Home Delivery Policy

Premises Name -

Policy active from date -

- All purchases for home delivery of food and alcohol will be made via {INSERT METHOD}
- It is {INSERT PREMISES} responsibility to service and deliver the alcohol. 3rd party delivery services will not be used.

OR

- It is {INSERT PREMISES} responsibility to arrange delivery through a 3rd party courier service namely {INSERT COURIER}. This will be done in line with the courier requirements and using an age verification service to ensure
- Records will be kept and maintained showing each order placed for despatch and will be held on the premises.
- A record of each transaction is carried by the person delivering the alcohol. This is via {INSERT METHOD}
- The record will show the quantity, description, and price of the alcohol
- The record will show the name and address of the person to whom the alcohol is being delivered to.
- Alcohol will only be delivered between the hours of 10am and 10pm daily
- Challenge 25 will be in place where any person receiving a delivery must prove they are over the age of 25 should they appear to look younger than this however over the age of 18. This is validated via {INSERT METHOD}
- Only current acceptable proof of age ID will be accepted e.g. European Driving Licence, European Provisional Driving Licence, Passport or PASS logo's ID
- All delivery drivers are employed by {INSERT PREMISES}.
- All delivery drivers have received their 2-hour mandatory licence training or hold a current personal licence
- All staff training records are held on site within an appropriate file.
- An electronic/paper refusal log will be used via {INSERT METHOD} should any delivery not be made due to either the recipient being unable to prove their age or appearing intoxicated.
- Should any product be refused, then it is credited to the customer {INSERT METHOD}
- The product will be returned to {INSERT PREMISES}.

Appendix 6 – Age Verification Policy

Premises Age Verification Policy - Deliveries

The Licensing (Scotland) Act, 2005 requires by virtue of mandatory condition that every premises operates an Age Verification Policy.

Extract from Mandatory Conditions

Age verification policy

9A(1) There must be an age verification policy in relation to the sale of alcohol on the premises.

(2) An “age verification policy” is a policy that 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).

The following Age Verification Policy will be applied to all sales of alcohol and deliveries made on and from these premises.

Name of premises:

--

Address of premises:

--

Name of premises licence holder:

Designated Premises Manager:

--	--

Any individual who appears to the person selling or serving alcohol to be under the age of **25 years** will, prior to any sale or service of alcohol taking place be asked to produce identification bearing their photograph, date of birth, and if relevant a holographic mark.

The Following documents are the only acceptable forms of identification at these premises.

- An EU Photo Card Driving Licence
- A Current Passport
- A Proof Of Age Card Bearing the PASS Hologram
- *(add from additional list of approved documents if required)*

East Lothian Licensing Statement of Licensing Policy – Deliveries

- 1.1 When making a delivery that includes alcohol, certain checks should be carried out such as Challenge 25 and checking that the customer is 18 years or over. No orders that include alcohol are to be left in nominated safe places. Staff delivering alcohol must be trained to the same level as staff who sell or supply alcohol in licensed premises. Licensees who use couriers to make their deliveries should ensure that they comply with the checks and standards required by the Licensing Board.

Appendix 7 – Authorisation to Sell Alcohol

Contact Details

Some details for contacting these organisations are given below. The list is not comprehensive but will give you some assistance should you require any advice or information.

East Lothian Council – Licensing Standards Officer and Licensing Team

Licensing, Administration and Democratic Services
John Muir House
Haddington
East Lothian
EH41 3HA

Telephone: 01620 827478 or 01620 827664

Email: LSO@eastlothian.gov.uk or licensing@eastlothian.gov.uk

East Lothian Council

Switchboard Telephone: 01620 827827

[Contact Us](#)

[East Lothian Council Homepage](#)

East Lothian Council Antisocial Behaviour Team

Telephone: 01875 824307

[Don't suffer in silence | Antisocial Behaviour | East Lothian Council](#)

Police Scotland – Licensing Department

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lothianscotborderslicensingeastmid@scotland.pnn.police.uk

Police Scotland East Lothian

[East Lothian - Police Scotland](#)

East Lothian Licensing Forum

[East Lothian Licensing Forum | East Lothian Council](#)