

Rationale for inclusion

1. The list of proposed offences set out in the draft regulations in section 3 of this consultation paper are being proposed in the context of the 5 licensing objectives set out in section 5 of the Act. Those objectives are:

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

2. The majority of the proposed offences set out in the draft regulations relate directly to alcohol licensing or other licensing regimes such as, for example public entertainment licences and taxi and private hire car licences (stretch limos) in the Civic Government (Scotland) Act 1982 where alcohol may be supplied. As well as those licensing offences, the other offences listed seek to reflect those matters which may make a person unsuitable to hold a personal licence under the Act. Similarly, in the case of a premises licence, where a licence holder has been convicted of such an offence and the Board have had this confirmed by the Chief Constable then the Board must review that licence in pursuance of the licensing objectives. Sections 44 and 83 of the Act set out the procedure Boards must comply with where they are notified of a conviction for a relevant offence for premises licences and personal licences respectively.

3. In all cases we consider that a single conviction for the offence is sufficient.

4. We would welcome your views on whether the offences proposed are appropriate. We would also welcome suggestions for other offences not listed to be considered.

5. Where respondents suggest offences that should be considered relevant offences we would particularly welcome views on whether or not the suggested offence should be a relevant offence after only one conviction or an accumulation of convictions. This applies to new suggestions and those already included in the draft regulations.

6. Where additions to the list of offences are suggested could you please complete the form set out at **Annex B**.

7. We would also welcome comments on whether we should also add convictions for “attempted crimes” relating to those set in the draft. It is however recognised that section 294 of the Criminal Procedure (Scotland) Act 1995 provides that attempts to commit an indictable crime is itself an indictable crime, and similar for offences punishable summarily. We would also welcome comments on whether offences of aiding and abetting, counselling, procuring and inciting any of the listed offences should also be relevant offences.

SABSM COMMENTS:

Any person seeking a licence [either personal or premises] to operate under the Licensing (Scotland) Act must be a fit and proper person who **has regard for all responsibilities placed on him/her** under any legislation. The objectives of the Building (Scotland) Act 2003 align with the stated objectives of the Licensing (Scotland) Act viz:

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

On the basis of the above, the Scottish Association of Building Standards Managers [SABSM] would suggest that Licensing Boards may wish to consider, as a test of “fitness for purpose”, confirmation that any applicant has not committed any of the offences prescribed under the Building (Scotland) Act 2003.

The Association would remind legislators of the need for a close working relationship between Licensing Boards and the Building Standards services which would obviate many, if not all, of the potential areas of difficulty on the rare occasion they may occur. If this close relationship is achieved then references to the above could take the form of “guidance”, failing which SABSM would ask that the undernoted be considered under the “relevant offences” listings.

SEE ANNEX B AT END OF DOCUMENT

Building (Scotland) Act 2003

Building warrants

8 Building warrants

- (1) A warrant granted under section 9 (a "building warrant") is required for-
 - (a) any work for-
 - (i) the construction or demolition of, or
 - (ii) the provision of services, fittings or equipment in or in connection with, a building of a description to which building regulations apply,
 - (b) any conversion of a building.
- (2) Where such work is carried out, or such a conversion is made-
 - (a) **without a building warrant**, or
 - (b) in a case where a building warrant has been granted, **otherwise than in accordance with the warrant**,

the persons specified in subsection (3) **are guilty of an offence**.

16 Applications and grants: offences

- (1) Any person who-
- (a) makes an application under section 9 for a building warrant or an amendment to a warrant **containing a statement which that person knows to be false or misleading in a material particular**, or
 - (b) **recklessly makes such an application containing a statement which is false or misleading in a material particular**,

is guilty of an offence.

Completion certificates

20 Completion certificates: offences

- (1) Any person who, under this Act-
- (a) submits to a verifier a completion certificate **containing a statement which that person knows to be false or misleading in a material particular**, or
 - (b) **recklessly submits to a verifier a completion certificate containing a statement which is false or misleading in a material particular**,

is guilty of an offence.

21 Occupation or use without completion certificates

- (5) Any person who occupies or uses a building to which this section applies (other than solely for the purpose of its construction or conversion)-
- (a) **knowing that no completion certificate has been accepted** under section 18(1) in respect of the construction or conversion, or
 - (b) **without any regard for whether a completion certificate has been so accepted**, **is guilty of an offence** unless the occupation or use is authorised by a permission granted under subsection (3).

COMPLIANCE AND ENFORCEMENT – Compliance with Notices

25 Building regulations compliance

(7) If, by the date specified under subsection (3)(b) (or such later date as may have substituted under subsection (6) or (9)(b)), the owner has not complied with the notice-

- (a) **the owner is guilty of an offence**, and
- (b) the authority may carry out such work as is necessary to make the building comply with the provision of building regulations specified in the notice and may recover from the owner any expenses reasonably incurred by it in doing so.

26 Continuing requirement enforcement notices

(3) If, by the date specified under subsection (2)(b) (or such later date as may have been substituted under subsection (5)(b)), the owner has not complied with the notice-

- (a) **the owner is guilty of an offence**, and
- (b) the authority may carry out such work as is necessary to comply with the notice and may recover from the owner any expenses reasonably incurred by it in doing so.

27 Building warrant enforcement notices

(7) If, by the date specified under subsection (2) (or such later date as the local authority may have substituted under subsection (6) or (9)(b)), the person on whom the notice is served has not complied with the notice-

- (a) **the person is guilty of an offence**, and
 - (b) the authority may carry out the work necessary-
 - (i) in a case referred to in subsection (2)(a) or (b), to secure that the work complies with building regulations,
 - (ii) in a case referred to in subsection (2)(c) or (d), to secure compliance with the notice,
- and may recover from the person any expenses reasonably incurred by it in doing so.

28 Defective buildings

(9) Subsection (10) applies where the owner-

- (a) has not begun the work required by a defective building notice by the date specified under subsection (3)(a), or
- (b) has not completed that work by the date specified under subsection (3)(b), (or, in either case, such later date as the local authority may have substituted under subsection (7) or (12)(b)).

(10) Where this subsection applies-

- (a) **the owner is guilty of an offence**, and
- (b) the local authority may carry out the work necessary to complete the work required by the notice and may recover from the owner any expenses reasonably incurred by it in doing so.

30 Dangerous buildings notices

(3) Subsection (4) applies where the owner has not begun, or has not completed, work required by a dangerous building notice by the date specified under subsection (2) for its commencement or, as the case may be, completion (or such later date as the local authority may have substituted under subsection (6)(b)).

(4) Where this subsection applies-

- (a) **the owner is guilty of an offence**, and
- (b) the local authority may carry out the work necessary to complete the work required by the notice and may recover from the owner any expenses reasonably incurred by it in doing so.

39 Powers of entry, inspection and testing

(6) A person who-

- (a) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (5), or
- (b) intentionally obstructs a person acting in the exercise of any power conferred by subsection (1) or (3),

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

43 Unlawful occupation of evacuated buildings

(1) Any person who-

- (a) has removed from a building in compliance with a requirement under section 42, or has been ejected from a building under schedule 5, and
- (b) thereafter occupies the building,

is guilty of an offence unless notice under section 42(7) has been given to the person.

(2) A person guilty of an offence under subsection (1) is liable-

- (a) on summary conviction to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

ANNEX B

TITLE OF LEGISLATION	PROVISION(S)	REASONS FOR INCLUSION	HOW MANY CONVICTIONS SHOULD BE DEEMED TO BE A RELEVANT OFFENCE – PLEASE ALSO PROVIDE REASONS
Building (Scotland) Act 2003	Section 8 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 16 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 20 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 21 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 25 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 26 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 27 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 28 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 30 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 39 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One
Building (Scotland) Act 2003	Section 43 – see above	Confirms test of “fit and proper person” who adheres to statutory requirements	One