



Licensing (Scotland) Act 2005

2005 asp 16

PART 3

PREMISES LICENCES

Premises licence applications

20 Application for premises licence

- (1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for a premises licence in respect of any premises.
- (2) An application under subsection (1) must—
 - (a) contain a description of the subject premises, and
 - (b) be accompanied by—
 - (i) an operating plan for the subject premises,
 - (ii) a plan (referred to in this Act as a “layout plan”), in the prescribed form, of the subject premises, and
 - (iii) the certificates required by section 50(1).
- (3) An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence application”.
- (4) An “operating plan” in relation to any premises is a document in the prescribed form containing—
 - (a) a description of the activities to be carried on in the premises,
 - (b) a statement of the times during which it is proposed that alcohol be sold on the premises,
 - (c) a statement as to whether the alcohol is to be sold for consumption on the premises, off the premises or both,
 - (d) 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,
 - (e) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—

Status: This is the original version (as it was originally enacted).

- (i) the ages of children or young persons to be allowed entry,
 - (ii) the times at which they are to be allowed entry, and
 - (iii) the parts of the premises to which they are to be allowed entry,
 - (f) information as to the proposed capacity of the premises,
 - (g) prescribed information about the individual who is to be the premises manager, and
 - (h) such other information in relation to the premises and the activities to be carried on there as may be prescribed.
- (5) Where alcohol is to be sold both for consumption on and for consumption off any premises, the operating plan for the premises may, under subsection (4)(b), state different times for—
- (a) the sale of alcohol for consumption on the premises, and
 - (b) the sale of alcohol for consumption off the premises.

21 Notification of application

- (1) Where a Licensing Board receives a premises licence application, the Board must give notice of the application to—
- (a) each person having a notifiable interest in neighbouring land,
 - (b) any community council within whose area the premises are situated,
 - (c) the council within whose area the premises are situated (except where the council is the applicant),
 - (d) the appropriate chief constable, and
 - (e) the enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005 (asp 5) in respect of the premises.
- (2) A notice under subsection (1) must be accompanied by a copy of the application.
- (3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (1)(d), respond to the notice by giving the Licensing Board—
- (a) one or other of the notices mentioned in subsection (4), and
 - (b) a report detailing—
 - (i) all cases of antisocial behaviour identified within the relevant period by constables as having taken place on, or in the vicinity of, the premises, and
 - (ii) all complaints or other representations made within the relevant period to constables concerning antisocial behaviour on, or in the vicinity of, the premises.
- (4) Those notices are—
- (a) a notice stating that neither—
 - (i) the applicant, nor
 - (ii) in the cases where the applicant is neither an individual nor a council, or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person, has been convicted of any relevant offence or foreign offence, or
 - (b) a notice specifying any convictions of—
 - (i) the applicant, or

Status: This is the original version (as it was originally enacted).

- (ii) in any of the cases mentioned in paragraph (a)(ii), any connected person,
for a relevant offence or a foreign offence.
- (5) Where the appropriate chief constable—
 - (a) proposes to give a notice under subsection (4)(b), and
 - (b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,the chief constable may include in the notice a recommendation to that effect.
- (6) In this section—
 - “antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
 - “neighbouring land” and, in relation to that expression, “notifiable interest” have such meanings as may be prescribed for the purposes of this section, and
 - “relevant period” means the period of one year ending with the date on which the appropriate chief constable receives notice under subsection (1)(d).

22 Objections and representations

- (1) Where a premises licence application is made to a Licensing Board, any person may, by notice to the Licensing Board—
 - (a) object to the application on any ground relevant to one of the grounds for refusal specified in section 23(5), or
 - (b) make representations to the Board concerning the application, including, in particular, representations—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.
- (2) The appropriate chief constable may, under subsection (1)(a), object to a premises licence application only on the ground that—
 - (a) the chief constable has reason to believe that—
 - (i) the applicant, or
 - (ii) in the cases where the applicant is neither an individual nor a council or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person, is involved in serious organised crime, and
 - (b) by reason of that involvement, the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused.
- (3) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any premises licence application made to the Board, the Board must—
 - (a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and
 - (b) have regard to the objection or representation in determining the application,

Status: This is the original version (as it was originally enacted).

unless the Board rejects the notice under subsection (4).

- (4) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the Board considers the objection or representation is frivolous or vexatious.
- (5) Where a Licensing Board rejects a notice of objection or representation under subsection (4), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.
- (6) In any proceedings by a Licensing Board for the recovery of expenses under subsection (5), a copy of any minute of proceedings of the Licensing Board—
 - (a) recording the Board’s rejection of the notice and the grounds for the rejection, and
 - (b) certified by the clerk of the Board to be a true copy,
 is sufficient evidence of the rejection and of the establishment of the ground for rejection.

23 Determination of premises licence application

- (1) A premises licence application received by a Licensing Board is to be determined in accordance with this section.
- (2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (3) In considering and determining the application, the Board must take account of the documents accompanying the application under section 20(2)(b).
- (4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—
 - (a) if none of them applies, the Board must grant the application, or
 - (b) if any of them applies, the Board must refuse the application.
- (5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2), 64(2) or 65(3),
 - (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
 - (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,
 the Board considers that the premises are unsuitable for use for the sale of alcohol,
 - (e) that, having regard to the number and capacity of—
 - (i) licensed premises, or
 - (ii) licensed premises of the same or similar description as the subject premises,
 in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be

overprovision of licensed premises, or licensed premises of that description, in the locality.

- (6) In considering, for the purposes of the ground for refusal specified in subsection (5)(c), whether the granting of the application would be inconsistent—
- (a) with the crime prevention objective, the Licensing Board must, in particular, take into account—
 - (i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21,
 - (ii) any recommendation of the chief constable included in the notice under subsection (5) of that section, and
 - (b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 21.
- (7) Where the Licensing Board considers that—
- (a) they would refuse the application as made, but
 - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,
- the Board must, if the applicant accepts the proposed modification, grant the application as modified.
- (8) Where the Licensing Board refuses the application—
- (a) the Board must specify the ground for refusal, and
 - (b) if the ground for refusal is that specified in subsection (5)(c), the Board must specify the licensing objective or objectives in question.
- (9) In subsection (5)(e), references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.

24 Applicant’s duty to notify Licensing Board of convictions

- (1) This section applies where any of the persons specified in subsection (2) is convicted of a relevant or foreign offence during the period beginning with the making of a premises licence application and ending with determination of the application.
- (2) Those persons are—
- (a) the applicant, and
 - (b) where—
 - (i) the applicant is neither an individual nor a council, or
 - (ii) the premises in respect of which the licence is sought are used wholly or mainly for the purposes of a club,any connected person.
- (3) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the application was made.
- (4) A notice under subsection (3) must specify—
- (a) the nature of the offence, and
 - (b) the date of the conviction.

Status: This is the original version (as it was originally enacted).

- (5) Where the Licensing Board receives a notice under subsection (3) at any time before they have determined the application, the Board must—
- (a) suspend consideration of the application, and
 - (b) give notice of the conviction to the appropriate chief constable.
- (6) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (5)(b), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (7).
- (7) Those notices are—
- (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
 - (b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.
- (8) Where the chief constable—
- (a) proposes to give a notice under subsection (7)(b), and
 - (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,
- the chief constable may include in the notice a recommendation to that effect.
- (9) On receipt of the chief constable's notice under subsection (7), the Licensing Board must resume consideration of the application and determine it in accordance with section 23.
- (10) For that purpose, that section has effect as if—
- (a) references in it to a notice under section 21(4)(b) included references to a notice under subsection (7)(b) of this section, and
 - (b) references in it to a recommendation under section 21(5) included references to a recommendation under subsection (8) of this section.
- (11) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence.
- (12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

25 Further application after refusal of premises licence application

- (1) Subsection (2) applies where a Licensing Board has refused a premises licence application in respect of any premises (such a refusal being referred to in this section as the “earlier refusal”).
- (2) Subject to subsection (3), the Board must refuse any subsequent premises licence application in respect of the same premises made before the expiry of the period of one year beginning with the date of the earlier refusal.
- (3) Subsection (2) does not apply in relation to any subsequent application made during that period if—
 - (a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or

- (b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

26 Issue of licence and summary

- (1) Where a Licensing Board grants a premises licence application, the Board must issue to the applicant—
 - (a) a premises licence—
 - (i) in the prescribed form, and
 - (ii) containing the information and documents specified in subsection (2), and
 - (b) a summary of the licence in the prescribed form.
- (2) The information and documents referred to in subsection (1)(a)(ii) are—
 - (a) the name and address of—
 - (i) the holder of the licence, and
 - (ii) the premises manager in respect of the premises to which the licence relates,
 - (b) a description of the premises in respect of which the licence is issued,
 - (c) the date on which the licence takes effect,
 - (d) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found,
 - (e) the operating plan and layout plan in respect of the premises to which the licence relates, and
 - (f) such other information as may be prescribed.