

## **LICENSING (SCOTLAND) ACT 2005**

### **Background**

The new Licensing Act came into force on 1<sup>st</sup> February 2008 and up to 1<sup>st</sup> September 2009 Highland Licensing Boards will have to process conversion applications for all licensed premises and registered clubs within the Highlands

One of the important changes in the legislation is that the Board is obliged to notify Community Councils of applications.

This entitles the Community Council to object to an application on one of the grounds listed below or

- make representations in support                      or
- look for modifications                                      or
- ask for particular conditions to be attached

### **The licensing objectives**

One of the fundamental precepts of the legislation is the introduction of five licensing objectives. They are meant to be the keystone on which licensing applications are determined. These are:-

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

## **General Background**

The main purposes of the new legislation are to:

- simplify and modernise existing legislation
- balance the rights of the majority of people who drink responsibly against the need to protect local communities from nuisance and crime associated with the misuse of alcohol
- provide strong monitoring and enforcement powers
- establish a more inclusive system for all those with an interest
- support responsible members of the licensed trade
- allow local flexibility and balance with consistency of decision making

One of the principal tools as to how this will be achieved is that licensees will now be required to submit to Licensing Boards operating plans.

## **Application Form and Operating Plan**

The Board will notify Community Councils of each application form. No copy will be sent. The application is a straightforward document and will contain details of the applicant and a description of the premises.

The Operating Plan is a public document and will contain the following information:-

- the activities to be conducted on the premises
- operating hours
- whether on/off sales or both
- other non licensing activities eg. provision of bedrooms
- how children will be dealt with
- capacity
- details of the Premises Manager. This will not be contained in conversion applications

It is intended that Licensing Boards and the public will have a better idea of how a licensing premises will be conducted and what activities will be taking place. The Board will be formulating conditions but the Scottish Government have laid down a number of mandatory conditions, details of which are on the Council's website.

### **The New Licences**

In future current licences will effectively be split into two licences. Each premises will have to have a personal licence holder, known as a premises manager, nominated to be responsible for the premises. Personal licences are obtained from the Board area in which the applicant lives. It is anticipated that for the vast majority of applications this will be an administrative process as the “fit and proper person” test for licensees no longer applies. So long as applicants are over 18, have the appropriate licensing qualification, do not have any relevant convictions and complete the application form properly there is no reason to refuse an application. The second licence is a “premises licence”. This is a much more complicated licence to obtain and these are the applications which are to be notified to the Community Council for the area.

### **The Transitional Period - 1<sup>st</sup> February 2008 to 1<sup>st</sup> September 2009**

During this transitional period which runs from 1<sup>st</sup> February 2008 to 1<sup>st</sup> September 2009 the Boards will be notifying each Community Council of all conversion applications received for that Community Council area. Over the Highlands this will be in excess of 1,500 applications. The Boards will receive the conversion applications in four batches depending on the date of expiry of the existing licence in March, June and October 2008, and January 2009.

The March applications will be sent out to the community councils for the area in which premises are located in the next few weeks. The basis of the conversion applications are that Licensees are entitled to certain “Grandfather Rights” so long as the premises are operating in substantially the same way as they were before the transitional period began, and they have the same, or shorter, operating hours. For Licensees, Grandfather Rights mean applications are administratively simpler and the issue of over provision does not arise.

Although Community Councils will receive notification of these applications the Boards do not anticipate that Community Councils like the Police or Fire Service or Environment Health will have objections to licences which are being converted. Nonetheless any premises licence application can be refused on the following grounds.

### **Grounds for refusal**

- The grant would be inconsistent with one or more of the five licensing objectives detailed on page 1
- Having regard to (1) the nature of the activities proposed to carry on, (2) the location character and condition of the premises and (3) the persons likely to frequent the premises, the Board considers the premises are not suitable for use for the sale of alcohol
- Over provision - having regard to the number and capacity of licensed premises or licensed premises of the same or similar description as the premises for which application is made in the locality 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. (The overprovision ground of refusal does **not** apply to conversion applications, and is unlikely to apply to any applications during the transition period).
- The subjects are excluded premises. Premises are excluded premises if they are regarded as garages. Premises are regarded as garages if the premises or any part of the premises is used for the sale by retail of petrol or derv, or the sale or maintenance of motor vehicles. Such premises cannot be licensed to sell alcohol under the Licensing (Scotland) Act 2005 unless they are used for the sale of petrol or derv, and residents in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of petrol or derv or, where the premises also sell groceries, as the principal source of groceries.

A Community Council has 21 days to respond and it is the Board's responsibility to copy any representations or objections to the applicant.

If the objection can not be resolved the Board will dispose of the application by way of a Hearing at which the Community Council will be entitled to appear and be heard.

In the event of the application being granted, an objector has no right of appeal.

### **Over-provision**

There is a wholly different approach to determining over-provision. After September 2009 the Boards are legally obliged to assess over-provision within each of the Divisional Board areas. This

can be either over-provision of licensed premises or over-provision of licensed premises of a particular description in any locality within the Board's area.

The Boards have yet to formulate an approach but it is likely that they will consider over-provision on the basis of premises of a particular description. This will enable Boards to categorise premises more accurately for this calculation. It is recognised that for the majority of the Highlands over-provision will not be an issue and if premises applications are to be refused it is likely to be based on one of the other grounds.

After the Board have completed the over-provision review, any new application will be considered in the light of that review. However, even after concluding the review if the Board were of the opinion that there was no over-provision, that does not exclude the overprovision ground from being a reason for refusal of new applications. The corollary is also the case in that applications might be granted even if the review has concluded that there is over-provision of licensed premises of a particular type in a locality.

**The overprovision ground of refusal does not apply to conversion applications, and is unlikely to apply to any applications until after 1<sup>st</sup> September 2009.**

**Future Updates:**

This note is intended to give Community Councils a brief guide to the new legislation. The transitional period during which conversion applications for existing premises will be considered runs until 1<sup>st</sup> September 2009. It is intended that prior to the conclusion of the transitional period more detailed guidance will be offered and if Community Councils have specific queries it would be helpful if these could be submitted in writing.

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