



## **LATE HOURS CATERING LICENSING UNDER THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982**

### **NOTES FOR GUIDANCE**

The following notes are a brief outline of the requirements for Late Hours Catering Licences under the above Act. They should be treated as **guidelines only and not an authoritative statement of law**. They do not purport to be more than a guide to the main provisions of the Act in order that would be applicants may consider if they need to apply for a Licence. Applicants are recommended to study the relevant provisions of the Act and obtain any further advice from their Solicitor.

**Please note that as well as requiring a licence under the Civic Government (Scotland) Act 1982 in order to undertake this activity you may also require planning permission for the premises/land to be used.**

**Planning permission is separate to the licencing process and is administered by the Council's Planning Service. It is therefore recommended that you contact the Planning Service at [eplanning@highland.gov.uk](mailto:eplanning@highland.gov.uk) to check whether planning permission is required.**

**Depending on the circumstances, it may be possible that a licence can be granted without planning permission having first been obtained (if permission is required). However, should you commence operating the licensed activity without first having the required planning permission in place, you will be in breach of planning legislation and relevant planning enforcement action may be taken against you.**

#### **1 LATE HOURS CATERING LICENCE**

In accordance with the Civic Government (Scotland) Act 1982, a Late Hours Catering Licence, issued by The Highland Council as licensing authority, is required for the use of premises between 11.00 p.m. and 5.00 a.m. for the sale to, or consumption by, the public of food whether on or off the premises.

#### **2 EXEMPTIONS**

A late hours catering licence is not required in respect of:-

- (a) Premises licensed under the Licensing (Scotland) Act 1976, during the permitted hours under that Act; or
- (b) Premises which enjoy a Public Entertainment Licence under the Civic Government (Scotland) Act 1982.

The Council may, on application, exempt the use of premises requiring a Late Hours Catering Licence from the requirement to have a Licence:-

- (a) In respect of any particular occasion; or
- (b) During a specified period not exceeding two months in any period of twelve months.

Conditions may be attached to the exemption.

### **3 CONDITIONS**

The Licence holder will be required to comply with the standard conditions attached to these Notes and which will form part of the Licence when granted.

The following is a breakdown of what the Council will expect from you as the licence holder in terms of demonstrating compliance with certain standard conditions, and in fulfilling the licensing objective of ensuring there is no undue public nuisance, public order or public safety.

#### **Electrical Safety**

For premises with a fixed electrical installation an application for licence should be accompanied by an up to date electrical report which states that the electrical installation is in a satisfactory condition. The report should be in the format prescribed in Appendix 6 of BS 7671. The required format is an **Electrical Installation Condition Report**. The form should be completed in accordance with the relevant Best Practice Guide on classification codes published by the Electrical Safety Council. For a completely new installation an electrical installation certificate is the appropriate format. The certificate will require to be signed by a qualified person who is

- A professionally qualified electrical engineer
- A member of the Electrical Contractors Association
- A member of the Electrical Contractors Association of Scotland
- A certificate holder of the National Inspection Council for Electrical Installation Contracting
- A Certificate Holder of the Scottish Electrical Certification (SELECT) scheme

Where the electrical report expires during the period in which the Late Hours Catering licence is in force then an updated report shall be submitted to the Council as soon as possible thereafter.

#### **Gas Safety**

For premises with gas appliances, an application for licence should be accompanied by an inspection record/s from a suitably competent Gas Safe Registered Engineer to confirm that all the gas appliances, installation pipework and ventilation arrangements have been inspected and tested and are safe to operate. For further information re gas safety requirements in catering

establishments you should refer to [Health and Safety Executive Information Sheet: Gas Safety in Catering and Hospitality\(Catering Sheet No 23.](#)

### Waste and Litter Arrangements

An application for all licences should be accompanied with details to confirm that satisfactory arrangements are in place for the disposal of litter and other refuse arising from the undertaking. This should include confirmation of where bins are stored, your appointed waste contractor, and the frequency of collection.

Where an application is to open after 1.00am in settlements which have late opening liquor licences (i.e. after 1.00 am), then additional information is required to demonstrate the arrangements in place for litter picking and cleaning around the frontage of the premises.

For your assistance, a pro-forma is attached to these guidance notes that can be completed in order to satisfy this requirement.

### Food Safety

The Councils Environmental Health Service will take into account your premises current Food Hygiene rating when considering your application.

The following table provides an overview as to how they will comment on your application based upon your premises Food Hygiene Rating.

Current FHIS Rating	Outstanding Formal Enforcement Action	Consultation Response
Pass	N/A	No objections or observations
Improvement Required (Minor Recurring)	N/A	No objections, observations only. Details of the FHIS rating will be provided to licensing along with a copy of the most recent inspection letter.
Improvement Required (Major e.g Cross contamination or no FSMS)	N/A	Applicant will be provided with a 7 day opportunity to address non-compliance. <ul style="list-style-type: none"> <li>• If FHIS rating changed to a Pass, then no objections or observations.</li> <li>• If FHIS rating changed to minor improvement required, then no objections but observations &amp; copy of most recent inspection letter provided to licensing.</li> <li>• If FHIS Rating remains Major non-compliance, then Environmental health will formally object to licence.</li> </ul>
Improvement	Yes	Environmental health will formally object to

Required	(HINs, RANs, HEPNs)	the licence application.
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As can be seen, where premises have been awarded an "Improvement Required" rating, applicants will be given a short period to address the issue/s prior to them commenting on your application. If your premises has an "Improvement Required" Rating, you are advised to liaise directly with the Councils Environmental Health Service at an early stage for further advice in order to address these matters. Failure to do this may result in a delay in the processing of your application and/or objection by Community Services – Environmental Health The Environmental health Service can be contacted on Tel: 01349 862021 or by Email: [envhealth@highland.gov.uk](mailto:envhealth@highland.gov.uk)

#### **4 POLICY HOURS**

From 5<sup>th</sup> February 2013 the policy hours for all late hours catering premises located in settlements (other than Inverness City Centre) which have late opening liquor licences (i.e. after 1.00 am); were amended to 3.00 am on the morning of Thursday to Monday and to 12 midnight on all other nights.

The following conditions will be applied to all licences issued in respect of the above.

- The trader shall make arrangements to the satisfaction of the licensing authority for the disposal of litter or other refuse arising from his undertaking and will, during operating hours, at the close of business each day and at any other times designated by officers authorised by the Licensing Authority (hereinafter referred to as "Authorised Officers"), collect and remove all litter within a 50m radius of the premise, and sweep the area or pavement outside his/her premises, that is to say sweep and thereafter remove and dispose of all waste and detritus from the area bounded by premises frontage to the kerb or similar structure.
- The trader will regularly wash (and at least once weekly) or otherwise cleanse, the area or pavement outside his/her premises, to remove stains, grease, chewing gum etc. or to a frequency agreed with Authorised Officers.

#### **Policy Hours for Inverness City Centre Premises**

The following are the policy hours agreed by the Highland Licensing Committee at its meeting held on 8<sup>th</sup> December 2015 for premises within Inverness City Centre:

Mondays: 2300 hours to 2400 hours

Tuesdays: 2300 hours to 2400 hours

Wednesdays: 2300 hours to 0300 hours (Thursday morning)

Thursdays: 2300 hours to 0330 hours (Friday morning)

Fridays: 2300 hours to 0400 hours (Saturday morning)

Saturdays: 2300 hours to 0400 hours (Sunday morning)

Sundays: 2300 hours to 0300 hours (Monday morning)

The following conditions will also be attached to licences:

- During any period when, in terms of the Licensing (Scotland) Act 2005, the Highland Licensing Board had declared a policy for a terminal hour later than 3.00 am for any premises with a licence in terms of the Licensing (Scotland) Act 2005, the trader shall be permitted to trade until 30 minutes after the said terminal hour declared by the Highland Licensing Board, provided that:
- the Licence Holder shall be required to give not less than 48 hours' notice to the Council and to Police Scotland of the date or dates on which it is intended that the premises remain open and the terminal hour (for late hours catering) to be applied on those dates;
- the premises may remain open until the terminal hour (for late hours catering) only on those dates for which notice has been given in accordance with this condition and only when, on those dates, there are premises within Inverness city centre with a licence issued in terms of the Licensing (Scotland) Act 2005 which are open for business until at least 30 minutes prior to this terminal hour, and
- the traders will close their entrance doors to the public not later than 10 minutes prior to the terminal hour and thereafter refuse entry to any member of the public.

In addition to these, any late hours catering premises within Inverness City Centre licensed to the hours detailed above will also be required to join the Radiolink scheme and Steward(s) require to be provided at the premises from 11.00pm until the premises close.

The Council's Principal Solicitor (Regulatory Services) has delegated authority to approve any requests for either exemption from the requirement to hold a licence or variation of licence, where the hours are either within or outwith policy, in relation to festive periods or for the period of any other significant event.

Any such exemptions granted under delegated powers will have the standard late hours catering conditions attached to the same together with any further conditions recommended by other Agencies/Services.

### **British Summer Time (BST):**

The clock change has no effect on the number of hours during which the premises are authorised to open.

For example, for a premises which is permitted to open from 11.00pm to 3.00am (4 hours), on the night in which the clocks go forward in March the premises will be permitted to open to 4.00am (new time), reverting to 3.00am thereafter. On the night the clocks go back in October the premises will be permitted to open to 2.00am (new time) reverting to 3.00am thereafter.

## **5 DETERMINATION OF AND DURATION OF LICENCES**

- (i) **Full licences:** a licence will normally be issued after the elapse of 28 days from receipt of an application. In certain circumstances, eg where objections have been received, applications can take considerably longer to be determined. A Licence shall remain in force, unless previously suspended or revoked, for a period of three years from the date when it comes into force, or such shorter period as the Council thinks fit. The Licence is not normally transferable.
- (ii) **Temporary Licences:** application may be made for a temporary licence which on being granted by the Council may have effect for a period not exceeding 6 weeks. A temporary licence is not capable of being renewed, but where application has also been made for a full licence for the same activity, the temporary licence, if granted, shall continue to have effect until the application for the full licence has been determined. Temporary licences may be granted earlier than the 28 day period specified for a full licence and the fee for a temporary licence can be found on the Council's website, see link below

[http://www.highland.gov.uk/info/1125/licences\\_permits\\_and\\_permissions/306/licence\\_application\\_fees](http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_application_fees)

- (iii) **Determination Period:** The Council have 6 months (9 months from 1st May 2017) in which to determine an application for a licence under the Civic Government (Scotland) Act 1982. If an application cannot be determined by officers using delegated powers and the 6 month (or, from 1st May 2017, 9 month) deadline is approaching then the application may require to be submitted to the Council's Highland Licensing Committee for their consideration. The Committee have the power to grant or refuse applications for a licence.

## **6 LICENCE TO BE RETAINED**

The Licence must not be altered, erased or defaced in any way, must be kept clean and legible and must not be lent to or used by any other person. Should the Licence be lost or become defaced or illegible the Licence holder shall obtain a replacement from the Council on payment of the appropriate fee which can be found on the Council's website, see link below

[http://www.highland.gov.uk/info/1125/licences\\_permits\\_and\\_permissions/306/licence\\_application\\_fees](http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_application_fees).

The Licence holder shall produce his/her Licence within five days of being requested to do so by a Police Constable or an authorised Officer of the Council or the Fire Authority.

## **7 RETURN OF LICENCE**

The Licence holder shall deliver his/her Licence to the Council:-

- (a) upon ceasing to act or trade as a Late Hours Caterer;
- (b) within seven days of receiving notice of the coming into effect of a decision of the Council to suspend or vary the terms of the Licence, or the decision of a Court to revoke it.

## **8 NOTIFICATION OF CONVICTIONS OR MATERIAL CHANGE OF CIRCUMSTANCES**

The Licence holder shall notify the Council as soon as is reasonably practicable with any **convictions or other material change** in circumstances affecting him/her or the activity to which the Licence relates, including any particulars referred to in the application for grant or latest application for renewal of the Licence. **If in doubt, notify the Council of any changes.**

## **9 NOTIFICATION OF MATERIAL ALTERATIONS**

The Licence holder shall not make or permit to be made any material change to the premises without the prior written consent of the Council unless in accordance with a requirement imposed by or in pursuance of any enactment other than parts I or II of the Civic Government (Scotland) Act 1982. **If in doubt as to whether consent is required, contact the Council.**

## **10 APPLICATION FORM AND FEES**

Application forms are available from Council Offices or Service Points shown at the end of these Notes.

You should take care in completing the application form to list, subject to the terms of the Rehabilitation of Offenders Act 1974, all convictions against you. If you are in doubt as to whether or not to list a conviction you should seek independent advice.

In order to apply, the application form must be returned along with the appropriate fee which can be found on the Council's website, see link below

[http://www.highland.gov.uk/info/1125/licences\\_permits\\_and\\_permissions/306/licence\\_application\\_fees](http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/306/licence_application_fees)

**Please note that the fee which is paid on submission of your application will not be refunded if your application is refused or withdrawn.**

As soon as your application has been submitted you should post a Notice on the Premises in the style attached. This requirement is not applicable to applications for temporary licences (see note 4(ii) above).

**NB Where the application has been made by or on behalf of a company or partnership (ie. a non-natural person) the address of the registered or principal office and the names of and the private addresses of the directors, partners or others responsible for its management should also be stated on the Notice. You should attempt to keep the Notice on display for a period of at least 21 DAYS and try and ensure that it does not become defaced or destroyed during that period, replacing the Notice if necessary.**

When the required Notice has been displayed in accordance with the legislation, you should, on expiry of the 21 DAYS, complete and sign the Certificate of Compliance and send it to the office that you submitted the application form to.

Your application will be referred to the Police, Planning, Building Control, TEC Services and Fire Service for comment.

## **11 PRIOR REFUSAL**

Please note that if you have applied for and been refused an application for a Late Hours Catering Licence in one Area of The Highland Council then, unless your circumstances have altered, you will be unlikely to be granted an application made in another Highland Council Area.

If refused, you cannot apply for the same kind of licence in respect of the same activity or for the same premises, within one year of that refusal unless there has been a material change in circumstances

## **12 HEARINGS**

Occasionally, and always if there is an objection to the granting of a Licence, a Hearing of the Area Committee of the Council will be held to decide whether or not a Licence should be granted. If the application is to be referred to a Hearing you will be invited to attend and notified in writing of the date, time and venue. A further appeal lies to the Sheriff Court.

## **13 OFFENCES**

The following are criminal offences liable, on summary conviction, to a fine:-

- (a) Carrying on an activity for which a Licence under the Civic Government (Scotland) Act 1982 is required without such a Licence;
- (b) Failing to comply with a Condition of a Licence;



- (c) Failing to notify the Council of a material change in the circumstances of a Licensee;
- (d) Failing to obtain the consent of the Council before making any material change to any premises, vehicle or vessel to which the Licence relates;
- (e) Failing to surrender the Licence (1) after it has been superseded or (2) when the Licensee has given up the activity to which it relates;
- (f) Failing to disclose convictions in the Application Form;
- (g) Making a false statement when filling in the Application Form.

The above list is not exhaustive and reference should be made to the Civic Government (Scotland) Act 1982 for all offences under the Act.

## Community Services - Environmental Health

### Late Hours Catering Licence –Waste and Litter Arrangements

The purpose of completing this form is to assist the Environmental Health Service in responding to your application in connection with a Late Hours Catering Licence. The information provided will be used to assess compliance with Conditions 5, 7 and 8 (where applicable) contained within the Highland Councils late hours catering licence conditions.

**You are requested to provide the information below and to return the completed questionnaire to the Councils Licensing Officer. Failure to do this may result in a delay in the processing of your application and/or objection by Community Services – Environmental Health.**

<b>NAME OF APPLICANT</b>		<b>APPLICATION REF. NO</b>	____/____ ____
<b>TRADING NAME AND ADDRESS OF PREMISES (INC POSTCODE)</b>			
<b>SECTION 1: - REFUSE DISPOSAL ARRANGEMENTS</b>			
1. Please provide details of your appointed waste contractor/s for the following types of waste:			
	Name of Appointed Waste Contractor		
General Waste			
Recyclables			
Cooking Oil			
Food Waste			
2. Please indicate the number of wheelie bins utilised by your premises:			
Type			Number of bins
1100ltr (Large wheeled bin)			
660ltr (Med wheeled bin)			
240ltr (Small domestic type)			
Other (Please provide details)			

3. Please tick the day/s of the week the bins are uplifted:-				
	General Waste	Recyclables	Cooking Oil	Other
Mon				
Tues				
Wed				
Thurs				
Fri				
Sat				
Sun				
4. Please indicate if your bin/s is labelled with your premises trading name?				
Yes <input type="checkbox"/>				
No <input type="checkbox"/>				
5. Please confirm if your bin/s is fitted with a functioning lock and is kept locked at all times when not is use?				
Yes <input type="checkbox"/>				
No <input type="checkbox"/>				
6. Please confirm if you have a designated bin storage area within the curtilage of your premises?				
Yes <input type="checkbox"/>				
No <input type="checkbox"/>				
If no, please provide details of where your premises bins are stored?				
SECTION 2 – LITTER PICKING AND STREET CLEANING				
7	Please confirm the frequency and usual time/s per day that you arrange to collect and remove all litter within a 50m radius of your premises?			
8	Please confirm the frequency and usual time/s of day that you sweep and remove all the waste and detritus from the area bounded by the premises frontage?			

9	Please confirm how regularly you wash or otherwise cleanse, the area or pavement outside your premises to remove stains, grease, chewing gum etc?
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**SECTION 3: DECLARATION**

I fully understand that this information will be used by the Councils Environmental Health Service for the purpose of assessing compliance with the Councils Late Hours Catering Licence Conditions. I declare that this information is correct at the time of application and is a true reflection of the arrangements which will be in place at the premises if a licence is granted: -

Signed: ..... (Applicant)

Print Name: .....

Date: .....

**THE COMPLETED FORM SHOULD BE RETURNED TO THE COUNCIL LICENSING OFFICER IN THE AREA WHERE YOU NORMALLY RESIDE AND ACCOMPANY YOUR LICENCE APPLICATION.**