

**HIGHLAND LICENSING BOARD**  
**GUIDANCE NOTE FOR MEMBERS CLUBS - LICENSING (SCOTLAND) ACT 2005**

The following guidance notes have been prepared by the Licensing Board for Members Clubs. They are based on the terms of the Licensing (Scotland) Act 2005 and the Licensing (Clubs) (Scotland) Regulations 2007 and provide a summary of the law. Clubs are advised to regard this note as a guidance note only and to take independent legal advice on the terms of the Act and its regulations.

**Background**

Members Clubs are currently authorised to sell alcohol by means of a Certificate of Registration granted by a Sheriff under Part VII of the Licensing (Scotland) Act 1976. Many members clubs also have regular extensions of permitted hours granted annually by the Highland Licensing Board. The Licensing (Scotland) Act 2005 brings members clubs which have traditionally been registered with the Sheriff under the remit of their local Licensing Board.

To sell alcohol on or after 1st September 2009, a club will require a premises licence issued by the Licensing Board. Clubs will become subject to similar regulation to other licensed premises. For example the Council's Licensing Standards Officer will have statutory power to enter licensed premises, including club premises, for the purposes of inspection and examination of records. However, if clubs satisfy certain criteria special provisions of the Act will ensure that some of the requirements of the Act will not apply to their premises

**How do Clubs Get a Licence?**

Transition to the Licensing (Scotland) Act 2005 started on 1st February 2008 and from that date clubs can start applying for their new premises licences. The Highland Board has decided that the last date by which applications need to be made is **1st March 2009**.

Premises licences issued by licensing boards after 1st February 2008 and before 1st September 2009 will not take effect until 5 am on 1st September 2009.

From the 1st February 2008 to the 1st September 2009 existing permissions (i.e. club registrations plus any regular extensions) will automatically continue to have effect and need not be renewed. However, between these two dates all clubs will be required to apply for a new form of premises licence. The same dates apply to all registered clubs irrespective of when their current registration with the Sheriff Court is due to expire. The application fee is £200 and an annual fee of £180 is payable on 1<sup>st</sup> September 2009 and yearly thereafter on 1<sup>st</sup> September.

**Definition of Club**

The special provisions of the Act relating to members clubs apply to any Club which:

1. Is not constituted for the purposes of making a profit; and
2. Has a written constitution and rules which make the following provisions -
  - (a) The business of the club is under the management of a committee or other governing body elected by the members of the club;
  - (b) No person under 18 is to be admitted as a member of the club (unless the club is devoted primarily to some sporting purpose or is a students' union as defined in the regulations);

- (c) No member of the committee or governing body and no employee of the club has any personal interest in the sale of alcohol on the premises or in the profits arising from such sale;
- (d) Apart from when an occasional licence has effect on the club premises, no person is to be supplied with alcohol on the club premises unless that person is a member of the club or a guest of a member accompanied by that member, or is a member of another club as defined in the Act;
- (e) Where no occasional licence is in force and a person who is on the premises at the invitation of a member of the club and is accompanied by that member is supplied with alcohol, there is to be entered in a book kept for the purpose -
  - (i) The date in question;
  - (ii) The name and address of the guest supplied with alcohol; and
  - (iii) The name of the member accompanying the person;
- (f) Correct accounts and books are to be kept showing the financial affairs and intromissions of the club;
- (g) The club is to have at least 25 members to be properly constituted; and
- (h) No person is to be allowed honorary or temporary membership of the club or to be relieved of the payment of the regular entrance fee or subscription, except to allow temporary participation in the activity which is the prime purpose of the club, and except in accordance with specific provisions set out in the club rules.

Members Clubs will be asked on applying to the Licensing Board to certify whether or not they comply with the above criteria in order to benefit from the exemptions mentioned below. Where such a certification is made, the Members Club will require to submit a copy of their written constitution and rules to the Board. Clubs which do not conform to the above criteria will be treated as licensed premises and will not be subject to the exemptions for licensed clubs.

On initial application, Members Clubs will be required to provide details of 'Connected Persons'. Under the Act a Connected Person is defined as an office bearer of the club. There is further requirement for any Connected Person to declare any relevant or foreign conviction which is not spent in terms of the Rehabilitation of Offenders Act 1974.

Clubs must keep their constitutions updated and when revised, submit a copy of the revised constitution to the Clerk to the Licensing Board. Clubs must also ensure their constitution, accounts and entry book are available for inspection by the Licensing Standards Officers and the Police at all reasonable times.

## **Lodging an Application for Premises Licence**

### **WHAT TO SUBMIT**

**Applicants are required to submit the following:-**

1. Premises application.
2. Operating plan.
3. Layout plan.
4. Fee of £200
5. Certificates from Building Standards, Planning and Food Hygiene where food is to be supplied on the premises (These are not required in the case of a club with an existing registration which is applying for a licence on the same basis as its existing operation).

## 6. Copy Constitution and rules.

The form of the application is prescribed in the Premises Licence (Scotland) Regulations 2007. A copy of the application form and operating plan can be downloaded from the Highland Council website, [www.highland.gov.uk](http://www.highland.gov.uk) or obtained from the Highland Licensing Board Offices, the addresses for which are given at the end of this form.

### **A copy of the Board's Guidance Note on Plans is available on the Council's website**

It is strongly recommended that applicants arrange for their plans to be prepared professionally. If a plan does not cover all areas of operation (including any outdoor areas) then licensees will find that they cannot operate in such areas of the premises.

### **Access by Children (under 16) and Young Persons (16 & 17) to Clubs**

The provisions for allowing children into Members Clubs will follow the same arrangements as other licensed premises under the Act which will require such premises to specify in their operating plan whether or not it is proposed that children and young persons are to be permitted entry to the premises. Where such a proposal is made, the premises will require to specify the terms on which it is proposed that children and young persons are permitted entry, the times at which they would be allowed on the premises, the ages of such children and the parts of the premises to which they would be permitted access. Appropriate conditions relating to access by children may be attached by the Licensing Board.

### **What are the Exemptions for Qualifying Clubs?**

Section 125 of the Licensing (Scotland) Act 2005 provides for exemptions from parts of the Act for clubs that fall within the description above. Qualifying clubs are exempted from:

- The assessments of overprovision (section 7)
- The ground of refusal of premises licence or premises licence variation application relating to overprovision (section 23(5)(e) & 30(5)(d))
- The requirement for operating plan to contain information as to the premises manager (section 20(4)(g))
- The requirement for name and address of premises manager to be specified in premises licence (section 26(2)(a)(ii))
- The requirement for there to be a premises manager for licensed premises (schedule 3 Para 4)
- The requirement for sales of alcohol under premises licence to be authorised by a personal licence holder (schedule 3 Para 5)
- The requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder (schedule 4 Para 4)

These exemptions mean that qualifying clubs will not generally need a personal licence holder or a premises manager. The exception is where they open past 01:00 a.m. and satisfy certain other requirements (beyond the scope of this leaflet) in which case they may become subject to specific mandatory conditions that include the presence of a personal licence holder.

### **What are the Training Requirements?**

The Premises Licence mandatory conditions contained in Schedule 3 to the Act provide at paragraph 6 for the training of **all** staff selling or serving alcohol. There is no exemption for clubs from this provision and clubs cannot use untrained staff. Where a person undertakes the role of selling or serving alcohol then that person must be trained to the standard prescribed in the Licensing (Training of Staff) (Scotland) Regulations 2007. That standard is at least two hours' relevant training from a person who holds a personal licence or who is accredited by the SQA.

Many club representatives have undergone recognised training in the past. Certain clubs may therefore choose to have one (or more) personal licence holder(s), even though there is no requirement for Clubs to have personal licence holders. Remember, only personal licence holders can train bar staff. It is recommended that clubs take legal advice on training from their solicitor, from a trade association or from accredited training providers.

Although the Board recognises that there is no legal requirement for a personal licence holder, it is the Board's view that there are advantages to clubs in employing one and the Board would encourage committees of clubs to consider this.

### **Occasional Licences and Clubs**

In terms of the Licensing (Clubs) (Scotland) Regulations 2007 Members Clubs can from 1st September 2009 apply for and be granted an occasional licence in respect of their licensed premises. This is irrespective of the terms of the normal rule that an occasional licence cannot be granted in respect of licensed premises. This provision was introduced in order to allow club premises to admit members of the public and sell alcohol to them. The Regulations provide that in respect of such premises the Licensing Board may issue in any 12 month period:-

- not more than 4 occasional licences each having effect for a period of 4 days or more; and
- not more than 12 occasional licences each having effect for a period of less than 4 days

provided that the total number of days in any period of 12 months in respect of which an occasional licence has effect does not exceed 56. When an occasional licence is in force, a club will be able to admit and sell or serve alcohol to members of the general public, as well as members and guests. During this time there will be no requirement for alcohol sales to be authorised by a personal licence holder and no requirement for guests to be signed in by members. Applications for occasional licences must be made to the Board at least six weeks prior to the first date on which the occasional licence is to be in force.

The Board has set out detailed advice to voluntary organisations in relation to occasional licences and this applies equally to clubs.

Clubs will appreciate that where they obtain occasional licences so that they can admit and sell/serve alcohol to the public, the Board will deal with the application in the same manner as it would an application from any commercial organisation.

Highland Licensing Board  
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