

GUIDANCE FOR COMMUNITY COUNCILS

LICENSING (SCOTLAND) ACT 2005

Background

The new liquor licensing legislation, the Licensing (Scotland) Act 2005 (“the 2005 Act”), came into force on 1 February 2008 and affected all licensed premises and registered clubs within the Highlands.

The 2005 Act introduced a single licence known as the premises licence. The premises licence provides the ability to sell alcohol from the premises to which the licence relates.

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

This entitles the Community Council to:

- object to an application (on one of the grounds listed below)
- make a representation in support of an application
- make a representation seeking modifications to the operating plan accompanying an application
- make a representation requesting that particular conditions are attached to a licence

The legislation also requires every Licensing Board to publish a statement of their policy in respect of the exercise of their functions under the 2005 Act, including the promotion of the licensing objectives as set out below.. The Board’s current policy applies from 4 November 2018 to 3 November 2023 and can be found here:

https://www.highland.gov.uk/info/1126/licences_alcohol/729/licensing_meetings_and_policies/4

The licensing objectives

The legislation introduced five licensing objectives. These licensing objectives are the fundamental aspects 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 and young persons from harm

What will the Community Council receive?

The Licensing Board will send a copy of the application. If the application is for the grant of a new premises licence, layout plans will also be provided. You are encouraged to publicise the applications within your community. The application form is a straightforward document and will contain details of the applicant and a description of the premises. An application for a major variation to a current premises licence will only contain the information which is being requested to be varied.

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 e.g. provision of bedrooms
- what access children will have to the premises
- capacity
- details of the premises manager.

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.

Grounds for refusal

The grounds for refusing a premises licence application are set down in section 23(5) of the 2005 Act and are as follows:

- The grant would be inconsistent with one or more of the five licensing objectives (as detailed above)
- 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 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 2005 Act 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.

*** Please note that after completing an overprovision review for the Highlands, the Highland Licensing Board has an overprovision policy which can be found at pages 22-25 of the Policy Statement. The overprovision policy solely relates to premises with an off sales display area exceeding 40 square metres.

What do I need to put in any representation or objection?

Matters that are raised must be on the relevant grounds (as set out above) and must also be directly connected to the sale of alcohol. You should make it clear in your response which particular licensing objectives that your representation or objection relates to. Objections and representations must have a proper basis in fact rather than be based on a belief or speculation.

The licensing system must not duplicate other regulatory regimes i.e. liquor licensing cannot be used simply as a means of putting additional pressure on an applicant where matters complained of should be dealt with by another regulator.

What are the timescales for responding?

A Community Council has 21 days to respond from the date of notification.

What happens after I make a representation or objection?

It is the Board's responsibility to copy any representations or objections to the applicant or licence holder. If the objection cannot be resolved, the Board will determine 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.

If you wish any additional guidance or advice, please contact your **Licensing Standards Officer** in your area:-

LICENSING AREA	LSO	CONTACT DETAILS
SOUTH Inverness, Nairn, Badenoch & Strathspey and Lochaber	Ian Cox	Tel: 01463 785089 E-mail: ian.cox@highland.gov.uk
NORTH Caithness, Sutherland, Ross, Skye and Lochalsh	Garry Cameron	Tel: 01408 635217 E-mail: garry.cameron@highland.gov.uk

Contact details for each area office:

Clerk to the Board	Inverness, Nairn, Badenoch and Strathspey areas	Lochaber
<p>Claire McArthur Highland Licensing Board Council Offices High Street Dingwall IV15 9QN Tel: (01349) 868541 claire.mcarthur@highland.gov.uk</p>	<p>Highland Licensing Board Town House High Street Inverness IV1 1JJ Tel: (01463) 785087 licensing@highland.gov.uk</p>	<p>Highland Licensing Board Council Offices Charles Kennedy Building Achintore Road Fort William, PH33 6RQ Tel: (01397) 707233 licensing@highland.gov.uk</p>
Caithness and Ross areas	Sutherland	Skye and Lochalsh
<p>Highland Licensing Board Caithness House Market Place Wick KW1 4AB Tel: (01955) 608214 licensing@highland.gov.uk</p>	<p>Highland Licensing Board Council Offices Drummuie Golspie KW10 6TA Tel: (01408) 635205 licensing@highland.gov.uk</p>	<p>Highland Licensing Board Council Offices Tigh na Sgire Park Lane Portree, IV51 9GP Tel: (01478) 613824 licensing@highland.gov.uk</p>