

The Highland Licensing Board

Meeting – 5 December 2017

Agenda Item	6
Report No	HLB/130/17

Response to Scottish Government draft guidance for completing disabled access and facilities statements

Report by the Clerk to the Licensing Board

Summary

This report invites the Board to note the invitation from the Scottish Government Justice Directorate to comment on the draft guidance they have prepared for applicants completing the disabled access and facilities statements which will require to be included with premises licence applications once the amendments to section 20(2)(b) of the Licensing (Scotland) Act 2005 made by section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 come into effect.

The draft guidance and associated draft amendment regulations are appended to this report at Appendix 1.

Draft comments on these documents are appended at Appendix 2 for approval by the Board as the Board's response to the Scottish Government Justice Directorate, subject to any amendments to these comments which the Board wishes to make.

1. Background

- 1.1 Section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act") amended section 20(2)(b) of the Licensing (Scotland) Act 2005 ("the 2005 Act") to require applicants for premises licences to submit with their application a disabled access and facilities statement in a form prescribed by Scottish Ministers. This amendment is not yet in effect.
- 1.2 The Scottish Government Justice Directorate is now preparing for this amendment to come into effect at some point in the coming months. To that end, they circulated on 9 November 2017 draft non-statutory guidance on the completion of these statements, together with draft regulations which will make the necessary amendments to The Premises Licence (Scotland) Regulations 2007. These 2007 Regulations prescribe the form which a premises licence application and accompanying documents must take. The draft amending regulations seek to add a prescribed form of disabled access and facilities statement to these other prescribed forms. The letter circulating these two drafts, and the two drafts themselves, are set out in **Appendix 1** to this report.

- 1.3 The Justice Directorate has decided not to conduct full public consultation on the draft guidance and draft regulations. They are instead seeking views of “stakeholders” and these views require to be submitted to the Justice Directorate by 7 December 2017. It is unclear which bodies they have selected as “stakeholders”, but these included the Licensing Standards Officers network and the Licensing Board Clerks (via the SOLAR licensing group).
- 1.4 Draft comments on both the guidance and the proposed prescribed form of disabled access and facilities statement have now been prepared by the Clerk in consultation with the Council’s Principal Policy Officer – Equality whose input has been extremely helpful. The draft comments are set out at **Appendix 2** to this report for approval by the Board, subject to any amendments members wish made.
- 1.5 It should be noted that the requirement to include a disabled access and facilities statement will apply only to applicants for new premises licences. There is no provision which would allow the Board to introduce a retrospective requirement that existing licence holders also prepare and submit such statements.
- 1.6 It should also be noted that section 20(2)(b) of the 2005 Act as amended will only requires the submission of a disabled access and facilities statement. It imposes no duties on premises licence holders to provide disabled access or facilities and the Board will not have any power to refuse an application on the ground that the premises has no such access or facilities.
- 1.7 However, premises which fail to provide disabled access may be open to complaint of failure to make reasonable adjustments under the Equality Act 2010. New premises or conversions of buildings for use as licensed premises would also require to comply with planning and building standards requirements, in particular, the building standards requirements for non-domestic properties that all occupants and visitors are provided with safe, convenient and unassisted access to the building and that access within the building should also be accessible to everyone.

Recommendation

The Board is invited to approve the draft comments set out at Appendix 2 for submission to the Scottish Government Justice Directorate, subject to any amendments which the Board wishes made to the comments.

Date: 15 November 2017

Author: Susan Blease

Appendix 1 – Scottish Government Justice Directorate letter of 9 November 2017

Appendix 2 – Draft comments on proposed guidance and regulations



T: 0131-244 3274
E: Anne.Hampson@gov.scot
09 November 2017

Dear Stakeholder

Scottish Government Guidance for Completing a Disabled Access and Facilities Statement

I am writing to seek your views on draft non-statutory guidance for applicants which has been developed to support the implementation of section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 (the “2010 Act”).

Section 179 of the 2010 Act amends section 20 of the Licensing (Scotland) Act 2005 (the “2005 Act”) to require individuals applying for an alcohol premises licence to provide a Disabled Access and Facilities Statement (the “statement”), in a form prescribed by the Scottish Ministers, along with their application.

Failure to provide a statement is not a ground for refusing an application but means that the premises application would be incomplete and could not be considered by the relevant Licensing Board.

The provision does not compel the venue to provide any specific aids/access for disabled people nor does it interfere with the existing duty under equality law to make reasonable adjustments to ensure that a disabled person can use a service as close as it is reasonably possible to get the standard usually offered to non-disabled people.

Section 179 of the 2010 Act originated from the ‘Barred’ campaign which sought to make accessibility information about licensed premises publicly available to make it easier for disabled people to find out about access and facilities of such premises.

Draft Guidance

The draft guidance at **Annex A** is a work in progress to support the implementation of section 179. The guidance is intended to help those applying for an alcohol premises licence to prepare their statement and it is hoped it will also assist Licensing Boards in assessing the statement. In particular, details of the timeline will be dependent on the particulars of any commencement order and the guidance will be updated to reflect the final position before publication.

It is important that the guidance meets its aims and we would appreciate comments on the following questions:

- a. Are there any areas within the draft non-statutory guidance which you found were unclear and not easily understood? If so, please specify where.
- b. Are there any other issues which you believe should be taken into account in finalising the guidance?

Draft premises licence application form

As well as bringing section 179 of the 2010 Act into force, the Premises Licence (Scotland) Regulations 2007 which provide for the premises licence application form require to be updated, to include a prescribed statement form. The draft Premises Licence (Scotland) Amendment Regulations 2018 at **Annex B** amend the 2007 Regulations to set out, at Schedule 6, the prescribed statement which will require to be submitted alongside an application for an alcohol premises licence or a provisional premises licence.

We wish to ensure that the prescribed form is clear in setting out the information required and would welcome comments on the following questions.

- c. Are there any areas in the new prescribed form which are unclear and not easily understood? If so, please specify which question.
- d. Is there anything further that you consider should be covered in the prescribed form?

Any comments you have on the draft guidance would be appreciated by **Thursday 07 December 2017** and should be sent to Anne.Hampson@gov.scot and copied to Peter.Reid2@gov.scot

Thank you in advance for your assistance with this.

Yours sincerely

Mrs Anne Hampson

ANNEX A

**LICENSING (SCOTLAND) ACT
2005**

**GUIDANCE FOR COMPLETING A
DISABLED ACCESS AND
FACILITIES STATEMENT**

Introduction

1. The Scottish Government is committed to promoting and protecting equality and human rights for disabled people. Our aims are to remove the barriers that isolate and exclude the individual and to achieve full equality and human rights for disabled people in Scotland. One of the five ambitions contained in *Fairer Scotland for Disabled People*¹ is that places are accessible to everyone so that disabled people can participate in Scottish society as full and equal citizens.
2. The requirement for individuals to include a Disabled Access and Facilities Statement along with an application for an alcohol premises licence will help ensure that disabled people can access information about the accessibility of a venue before visiting it. It is hoped that the process of writing a Disability Access and Facilities Statement will raise awareness amongst applicants of the accessibility of their premises and action they could take to improve this.

Legislation

3. The Criminal Justice and Licensing (Scotland) Act 2010² (the "2010 Act") received Royal Assent on 6 August 2010. Section 179 of the 2010 Act amends section 20(2)(b) of the Licensing (Scotland) Act 2005³ (the "2005 Act") to require applicants for a premises or provisional premises licence to provide a Disabled Access and Facilities Statement (the "statement"). Section 179 also sets out what the statement is to contain.

Background

4. Section 179 of the 2010 Act originated from the 'Barred' campaign which sought to make accessibility information about licensed premises publicly available to make it easier for disabled people to find out about access and facilities of such premises. George Foulkes MSP lodged the provision as a Stage 3 amendment and it was supported by the Scottish Government.
5. Section 20(2)(b) of the 2005 Act currently requires that an application for a premises licence be accompanied by an operating plan in the prescribed form, a layout plan, and the certificates required by section 50(1) of the 2005 Act (in respect of a provisional premises licence section 45(10) of the 2005 Act provides that the certificate should be read as that required by section 50(2)).
6. The Premises Licence (Scotland) Regulations 2007⁴ (the "regulations") currently provide for the prescribed forms to be completed in respect of the premises licence/provisional premises licence application at Schedule 3 and the operating plan at Schedule 5. These regulations will need to be updated to include

¹ : <http://www.gov.scot/Resource/0051/00510948.pdf>

² <http://www.legislation.gov.uk/asp/2010/13/contents>

³ <http://www.legislation.gov.uk/asp/2005/16/contents>

⁴ <http://www.legislation.gov.uk/ssi/2007/452/contents/made>

provision for the disabled access and facilities statement and the prescribed form required under section 179 [this draft guidance is work in progress and subject to change].

Guidance

7. This non- statutory guidance is primarily to assist applicants in completing the required statement however, we hope that Licensing Boards, the Police, Local Licensing Forums, Licensing Standards Officers, and the licensed trade and their representatives may also find it useful.
8. The guidance should be read in conjunction with the relevant legislation, and the relevant accompanying documents for the 2010 Act⁵. This guidance should not be seen as a replacement for independent legal advice.

About the disabled access and facilities statement

9. The statement should contain clear information about how accessible the venue is for disabled people. It should also describe the facilities and/or any other provision made on (or in connection with) the premises for disabled people.
10. The purpose of the statement is to ensure that disabled people can access information about the accessibility of a venue before visiting it. It is good business practice to ensure that premises are accessible and welcoming to all customers.
11. The process of writing a statement should also raise awareness amongst applicants of the accessibility of their premises and action they could take to improve access to their premises.
12. Failure to provide this statement is not a ground for refusing an application. Rather it would mean that the premises licence application would be incomplete. The application could not therefore be considered by the Licensing Board as it would not be a valid application. A premises application which is accompanied by the statement would require to be determined by the Licensing Board in the normal way.

Consideration of the statement

13. Local Licensing Boards are likely to wish to be satisfied that applicants have given consideration to what access and facilities they have for disabled people and have described them fully in their statement rather than merely listing them. They will also have to bear in mind that some premises may have no such access or facilities and that this does not mean that a licence should not be granted.
14. In completing their statement, it is important for applicants to demonstrate that they have given full and proper consideration to the accessibility of their premises. It is particularly important to consider that disability extends beyond

⁵ <http://www.parliament.scot/parliamentarybusiness/Bills/16193.aspx>

people with mobility difficulties and wheelchair users and includes:

- People with mental health problems and/or psychological difficulties
- People who are blind or partially sighted
- People with learning difficulties/disabilities
- People who are deaf or hard of hearing
- People who use British Sign Language
- People with long term illnesses
- People with an acquired brain injury

15. It is important for applicants to have an understanding of the full range of barriers that disabled people experience in order to understand how accessible their premises are. It may therefore be advisable that those who do not have a basic understanding of disability equality undertake disability equality training and/or have their premises access audited. It is best practice for training and access audits to be carried out by disabled people.

Other sources of information

16. Further information is available from website sources such as Disability Equality Forum⁶ (formerly Scottish Disability and Equality Forum), Convention on the Rights of Persons with Disabilities⁷; Independent Living in Scotland⁸; Capability Scotland⁹, Glasgow Disability Alliance¹⁰ and Equality and Human Rights¹¹.

17. The Access Panel Network Scotland website¹² contains a directory of Local Access Panels¹³. Local Access Panels may be able to provide advice and can also carry out Access Audits and advise on adaptations to make premises more accessible.

18. Euan's Guide¹⁴ is a disabled access review website. Venue representatives can register with Euan's Guide and provide details about how accessible their premises are to the public. The public can also share their reviews and experiences of premises on the website.

⁶ www.disabilityequality.scot

⁷ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁸ <http://www.ilis.co.uk/home>

⁹ <http://www.capability-scotland.org.uk/>

¹⁰ www.gda.scot

¹¹ <http://www.equalityhumanrights.com/scotland/>

¹² <http://accesspanelnetwork.org.uk/>

¹³ <http://accesspanelnetwork.org.uk/directory-panels/>

¹⁴ <https://www.euansguide.com/>

19. In 2012 The British Beer and Pub Association published accessibility guidance in outlining best practice for pubs – ‘*An open welcome Why being accessible is good for your pub*’. This was updated in 2016 - ‘*Pubs are for everyone – ‘Why being accessible is important*’¹⁵.

20. Visit Scotland also provides information in relation to Accessibility Guides¹⁶.

Commencement

21. The outstanding provisions at section 179 of the 2010 Act are to be fully commenced on [Date to be agreed] by the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No.14 and Saving Provision) Order 2017 [this draft guidance is work in progress and subject to change].

22. The transitional and consequential amendments to existing legislation as a result of the provisions at section 179 of the 2010 Act are detailed below.

Transitional provisions

23. The transitional and savings provisions contained in the commencement order provide that section 179 of the 2010 Act does not apply to applications made prior to the commencement date. This means that alcohol premises which are either already licensed or have a completed application submitted or under consideration prior to section 179 coming into force are not required to provide a statement [this draft guidance is work in progress and subject to change].

Consequential Amendments

24. A result of implementing section 179 of the 2010 Act, the regulations which provide for the premises licence application form required to be updated, to include a prescribed statement form. These revised regulations¹⁷ come into effect at the same time as the provisions in section 179.

¹⁵ <http://s3.amazonaws.com/bbpa-prod/attachments/documents/uploads/24453/original/BBPA%20Access%20Report%202016%20final.compressed.pdf?1485793591>

¹⁶ <https://www.accessibilityguides.org/>

¹⁷ To be inserted when available

ANNEX B

2018 No.

LICENSING (LIQUOR)

The Premises Licence (Scotland) Amendment Regulations 2018

Made - - - -

Laid before the Scottish Parliament

Coming into force - - - 30 March 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(6), 146 and 147(1) of the Licensing (Scotland) Act 2005⁽¹⁸⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Premises Licence (Scotland) Amendment Regulations 2018 and come into force on 30th March 2018.

Amendment of the Premises Licence (Scotland)Regulations

2—(1) The Premises Licence (Scotland) Regulations 2007(2) are amended in accordance with paragraphs (2) to (4) .

(2)In regulation 2(b) after “layout plan” insert “ and a disabled access and facilities statement , all”.

(3)After regulation 6 insert-

7.Disabled access and facilities statement

A disabled access and facilities statement is to be in the form set out in Schedule 6.

(4) The Schedule to these Regulations inserts a Schedule 6 containing a template form for a disabled access and facilities statement .

Michael Matheson

A member of the Scottish Government

1)2005 asp 16
(2)SSI 2007/452

SCHEDULE

SCHEDULE 6

Regulation 7

DISABLED ACCESS AND FACILITIES STATEMENT

Licensing (Scotland) Act 2005, section 20(2)(b)(ia)

Question 1

Disabled access and facilities

1(a)	Is there disabled access to the premises	YES / NO*
1(b)	Do you have facilities for those with a disability	YES / NO*
1(c)	Do you have any other provisions available to aid the use of the premises by disabled people	YES / NO*
<i>*Delete as appropriate</i>		

If you have answered Yes to any of the questions above please complete, as appropriate, the following sections.

Question 2

Access to the premises

Please provide clear information about how accessible the premises are for disabled people.

Question 3

Facilities available

Please describe the facilities provided for disabled people

Question 4

Other provisions

Please provide details of any other provisions made to aid the use of the premises by disabled people.

DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT

If signing on behalf of the applicant please state in what capacity.

The contents of this disabled access and facilities statement are true to the best of my knowledge and belief.

Signature * (see note below)

Date

Capacity APPLICANT/AGENT

Telephone number and email address of signatory.....

*** Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Premises Licence (Scotland) Regulations 2007 (the 2007 Regulations).

Section 20 of the licensing (Scotland) Act 2005 (the 2005 Act) requires that an application for an alcohol premises licence be accompanied by an operating plan , a layout plan and any certificates required under section 50(1) of the 2005 Act . Section 179 of the Criminal Justice and Licensing (Scotland) Act 2010(the 2010 Act) amended section 20 of the 2005 Act to require that a disabled access and facilities statement must also be included with such applications .

Regulation 2(b) of the 2007 Regulations advise that a Premises licence must include an operating plan and a layout plan in respect of the premises , regulation 2(2) of these Regulations amends this by inserting that the licence must also include a disabled access and facilities statement .

Regulation 2(3) of these Regulations inserts a regulation 7 into the 2007 Regulations detailing that a disabled access and facilities statement is to be in the form set out in Schedule 6 to the 2007 Regulations .

Regulation 2(4) and the Schedule to these Regulations inserts a Schedule 6 into the 2007 Regulations . This provides a template of what the disabled access and facilities statement should contain.

THE HIGHLAND LICENSING BOARD

1. Comments on the draft Scottish Government Guidance for Completing a Disabled Access and Facilities Statement

- The Highland Licensing Board notes that the Scottish Government Justice Directorate Licensing Team have opted not to conduct a full public consultation on this draft Guidance, advising in their covering email to the LSO network that this is because the issue is of “fairly limited interest”. The Board strongly disagrees with this assessment. However, if the decision remains not to engage in full public consultation, the Board considers that there should, at the very least, be consultation with key disability groups (if not already done), such as Disability Equality Scotland, Inclusion Scotland, RNIB, Guide Dogs, Scottish Council on Deafness and others. The Board also suggests that the Justice Directorate Licensing Team liaise on this issue with the Scottish Government Equality Unit, if they have not already done so.
- The “**Introduction**” section to the Guidance would be improved by the inclusion of information about the number of disabled people in Scotland and by highlighting, right from the start of the Guidance, the business case for licensed premises providing good disabled access arrangements and good facilities for disabled people.

This might include information such as the fact that one in five people in the UK is disabled. This means 20% of potential customers. There are 12 million disabled people in the UK, whose spending power is estimated to be worth over £200 billion a year, the so-called “purple pound”.

- **Paragraphs 2. and 10.** of the Guidance both contain statements to the effect that “*The purpose of the statement is to ensure that disabled people can access information about the accessibility of a venue before visiting it.*” No indication is given, however, as to how or where disabled people may access the statement to find out this information.

It is noted that Section 9 (Licensing Board’s duty to keep a public register) of the Licensing (Scotland) Act 2005 and The Licensing Register (Scotland) Regulations 2007 are not amended to require Boards to include these disabled access and facilities statements in their public register (they are not part of the premises licence operating plan), although Boards could, of course, choose to do so. However, the Board’s public register is in any event hardly the most obvious or accessible place for a disabled person to go to when checking whether a restaurant, pub, club, hotel or other licensed premises which they are thinking of visiting is likely to be accessible for them.

If the Guidance and amendment Regulations cannot prescribe a single approach to making these statements publicly accessible, the Guidance should at least include recommendations as to how or where licence holders should make them accessible.

- **Paragraph 13.** states: “*Local Licensing Boards are likely to wish to be satisfied that applicants have given consideration to what access and facilities they have for disabled people and have described them fully in their statement rather than merely listing them.*” The Guidance would be improved by including examples of good and bad practice to explain what is meant by “*described them fully ... rather than merely listing them*”.

It goes on to state: “*They [Boards] will also have to bear in mind that some premises may have no such access or facilities and that this does not mean that a licence should not be granted.*” In the absence of any possible sanction available to the Board in respect of premises which have “*no such access or facilities*” the Guidance would be improved by at least pointing out to premises licence applicants that a failure to provide disabled access may leave premises open to complaint under the Equality Act 2010.

- **Paragraphs 14. and 15.** would be improved by adding/highlighting that not all disabilities are obvious: many disabilities are “hidden”. To assist premises licence applicants in this regard, it would also be helpful to refer them to the HMO Government Office for Disability Issues Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability.
- **General comment:** The Guidance would also benefit greatly from some practical examples of disabled access and facilities, to assist applicants in considering their answers to the questions in the prescribed form of statement. For example:
 - Disabled access and egress: eg ramped access, electronic doors
 - Access within the premises: eg level floor, stairs, lifts
 - Facilities: eg accessible toilets, hearing loop, seating areas, low level bar area
 - Other provisions: eg large print menus/price lists, table service, water for assistance dogs

2. Comments on the Schedule to the draft The Premises Licence (Scotland) (Amendment) Regulations 2018

Draft form of Disabled Access and Facilities Statement:

“Question 1

Disabled access and facilities

1(a)	Is there disabled access to the premises	YES / NO*
1(b)	Do you have facilities for those with a disability	YES / NO*
1(c)	Do you have any other provisions available to aid the use of the premises by disabled people	YES / NO*
<i>*Delete as appropriate</i>		

If you have answered Yes to any of the questions above please complete, as appropriate, the following sections.”

Comments:

- If the Guidance included practical examples of what is meant by “disabled access”, “facilities” and “other provisions” (as suggested in the comments on the Guidance above), each section of Question 1 could then refer those completing the section to the appropriate part of the Guidance.
- The wording at **1(b)** should be changed to “*Do you have facilities for disabled people*”.
- The question should also address access arrangements **within** the premises.
- A statement should be included reminding the applicant that if they have answered “no” to any of these questions, they may be open to a complaint under the Equality Act 2010, as well as the risk of losing customers.

“Question 2

Access to the premises

Please provide clear information about how accessible the premises are for disabled people.”

Comment:

- The poor wording of Question 2 will encourage meaningless answers such as “Very accessible”, “Reasonably accessible”, etc. It should be reworded to require a detailed description of access arrangements for disabled people into, from and within the premises.