

THE HIGHLAND LICENSING BOARD

GUIDANCE NOTE ON HEARINGS BEFORE THE HIGHLAND LICENSING BOARD

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Introduction

The Licensing (Scotland) Act 2005 provides that proceedings before the Board are to be such as the Board may by rules provide. The Board considers that the primary rule in relation to the conduct of hearings is that all parties must be given a fair opportunity to be heard and that the hearing is conducted in accordance with all other rules of natural justice. This Guidance Note includes an explanation of the procedure which will be followed by the Board to ensure it complies with this rule, both prior to and at a hearing before the Board.

The Board recognises that to achieve fairness at hearings regard must be had to equality of opportunity. To this end, parties invited to hearings will be asked to notify the Board of any special access requirements, visual or hearing impairments, requirement for interpretation services or other special needs. The Board will take all reasonable steps to accommodate any such needs.

Information is also provided in this Guidance Note on what happens after a hearing and on what rights parties may have to request a written statement of the reasons for the decision the Board has reached at the end of a hearing and to appeal that decision.

The guidance on hearings procedure set out in this Guidance Note will generally apply to hearings under the Gambling Act 2005 as it does to hearings under the Licensing (Scotland) Act 2005. One difference in the procedure, however, is that the Gambling Act 2005 confers no discretionary power on the Board to consider late representations on premises licence-related applications or premises licence reviews. Consequently, paragraph 2.4 of this Guidance Note and paragraph 2 of Appendix 3 should be disregarded in the case of gambling premises-related hearings.

There is a further difference in that the procedure for dealing with premises licence review proposals or review applications under the Gambling Act 2005 includes a requirement to allow a period for written representations to be made by interested parties and responsible authorities (as defined in the Act) and persons who have made such representations are entitled to be heard at the subsequent review hearing. This has been reflected in the "Review hearings" section of Appendix 3 (Order of Speakers at Hearings).

If you would like information on this Guidance Note in an alternative format or language or you require clarification of anything in it, please contact:

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SECTION 1

Reasons for hearings being held

1.1 Licensing (Scotland) Act 2005 hearings

The Licensing (Scotland) Act 2005 (the “Act”) requires that before determining certain types of licence applications, or before taking certain types of action in respect of an existing licence, the Board must hold a hearing.

In practice, the most common hearings before the Board are hearings on applications for new premises licences and for major variations of premises licences. A hearing is required on these types of application notwithstanding that no objections or representations have been received and that the hours and other matters sought in the application are wholly in line with the Board’s current Policy Statement.

A hearing is required for personal licence applications only where Police Scotland have recommended refusal of the application in the interests of any of the licensing objectives. The Board has discretion, however, also to hold hearings on personal licence applications where Police Scotland are not recommending refusal but have confirmed that the applicant has convictions for relevant offences.

Hearings are also required where the Board makes premises licence review proposals or has received a premises licence review application from a Licensing Standards Officer (“LSO”) or from any other party.

A full list of Licensing (Scotland) Act 2005 applications for which hearings are required can be found at APPENDIX 1

1.2 Gambling Act 2005 hearings

The Board is also responsible for determining applications under the Gambling Act 2005 for premises licences, variation, transfer or reinstatement of premises licences and for provisional statements. The Gambling Act 2005 requires that, unless all parties have agreed otherwise, a hearing be held on any such application where competent representations on the application have been made or where the Board proposes to attach additional conditions or to exclude one of the statutory default conditions which would otherwise be applicable to such licences. The Board is also responsible for reviews of existing premises licences and a hearing is required in the case of any such review unless the parties consent to the review being carried out without one.

SECTION 2

Procedure prior to the hearing

2.1 Notice of the hearing

A letter giving the date and time of the meeting at which the hearing will take place is sent out prior to the hearing to all parties entitled to be heard. Parties will also be sent any letters of objection or representation, letters from Police Scotland, any LSO's report and, in the case of review hearings, details of the review proposal or review application. These will be sent at least 7 days before the hearing. The Clerk's report and the agenda for the meeting are made available on the Council's website at least 3 working days before the meeting at which the hearing will take place.

2.2 Representation

All parties entitled to be heard will be invited to attend the meeting to address the Board and/or have a representative attend to address the Board on their behalf. Any person may act as a party's representative, but the Board has the right to decide not to hear from a person who claims to represent a party if the Board is not satisfied that the person has written authority from that party.

2.3 Special needs

The letters of invitation to attend the hearing will also invite parties to notify the Clerk to the Board, as many days as possible before the date of the hearing, of any special access requirements, visual or hearing impairments, requirement for interpretation services or other special needs. The Board will take all reasonable steps to accommodate any such needs.

2.4 Late objections or representations

Persons who have submitted late objections or representations are also invited to attend the hearing but are advised that the Board may decline to consider their objection or representation unless, at the start of the hearing, they first satisfy the Board that there is good reason for the objection or representation having been lodged late. Late objections or representations are copied to the applicant or licence holder in advance of the meeting and they are given opportunity to object to consideration of the late documents.

2.5 Premises licence or major variation applications where no objections have been lodged

The Board is obliged to invite all applicants for premises licences and major variations to a hearing even if no objection has been received and if the terms of the licence or variation sought are in line with policy. In such cases, at the hearing itself, while the applicant must still be given the opportunity to speak, the Board may sometimes grant the application without seeking further information from the applicant. However, even where this outcome may be likely, the decision as to whether to attend the hearing is a matter for the applicant. Licensing staff cannot offer advice on this other than to confirm to applicants in advance of the hearing the absence of any objections and the extent to which the application is in line with policy.

2.6 Requests for postponement

If a party is unable to attend on the date proposed, they may submit a request for postponement to the Clerk in advance of the meeting, setting out their reasons for the request. The Board will generally permit postponement if it considers there is good reason to do so and provided that the relevant statutory deadline for holding the hearing can still be met.

2.7 Witnesses

If a party intends to call any witness to give evidence at the hearing, the witness's details and an indication of the nature of the witness's evidence should be provided to the Clerk by no later than 3 working days before the hearing. It will be the party's responsibility to ensure the attendance of any witness they wish to call. Witnesses will not be put under oath before giving evidence to the Board as, although the Board has quasi-judicial functions, it is not a court of law.

2.8 Documents

If a party intends to refer, at the hearing, to any documents not already circulated, copies of these should be sent to the Clerk and to all other parties to the hearing as early as possible but in any event by no later than 3 working days before the hearing.

SECTION 3

Procedure at the hearing

See also [APPENDIX 2 – FREQUENTLY ASKED QUESTIONS](#)

3.1 Venue

Hearings take place in the main Council Chamber at The Highland Council Headquarters, Glenurquhart Road, Inverness, IV3 5NX. The Chamber is wheelchair accessible and is equipped with a “loop” system for those with a hearing aid.

3.2 Commencement time

A number of hearings are scheduled to take place at each meeting of the Board and it is not possible to indicate precise times for the commencement of each hearing. Parties are therefore advised to be present from the commencement of the meeting.

3.3 The hearing

At the start of the hearing, the Convener will identify which parties are present and/or represented. If any party is not present or represented and has not made a request for a postponement, and if the Board is satisfied that invitation to the hearing was duly sent, the hearing will proceed in the absence of that party. Any timeous written representations previously made by the absent party will, however, still be considered by the Board.

The order in which parties will usually be invited to speak is indicated at [APPENDIX 3](#). This order is generally followed, but the Convener of the Board has discretion to depart from it if he or she considers it necessary to do so in the interest of fairness. This might happen, for example, where the Convener needs to allow a party a further opportunity to speak because some new information has come to light after that party has already concluded their submissions. The emphasis in all cases will be on ensuring that all parties are given a fair opportunity to present their case, to ask questions of other parties and to respond to points raised by other parties. Board members may also ask questions of the parties.

When speaking, objectors and persons who have made representations should confine their submissions to points previously raised in their letters of objection or representation. The introduction of any new matters, notice of which has not previously been given to the applicant or other parties, may result in a need to adjourn the hearing to allow fair opportunity for the applicant or other parties to consider and prepare their response.

Similarly, if, during the hearing, any party produces and refers to any document not previously sent to the Clerk and to other parties, the hearing may require to be adjourned for circulation of copies of the document and to allow time for other parties to consider its content and their response.

3.4 The Board's deliberations and decision

When the Convener is satisfied that the parties have said all they wish to say he or she will invite the Board members to deliberate and reach a decision. Once deliberation has commenced, parties will not generally be given further opportunity to speak. However, if a member raises further questions for clarification purposes, the parties will be invited to respond and if, during deliberation, a member raises any new matter of which parties have previously had no notice, the Convener will allow parties time to consider the new matter and comment thereon. An adjournment of the hearing for this purpose will be allowed if required.

Prior to making its decision, which must take place in public, the Board may choose to deliberate in private. This is the only part of the proceedings which may take place in private. If this occurs, when the public meeting reconvenes the Clerk will repeat any legal advice given to members during their private deliberation.

At the end of the deliberation, the Board will reach a decision and outline its reasons. The Board's decision may be unanimous or by majority vote. In the event of a tied vote, the Convener has the casting vote.

SECTION 4

Procedure after the hearing

4.1 Licensing (Scotland) Act 2005 hearings

In respect of alcohol licensing-related hearings, after the hearing, a notice of determination setting out the Board's decision will be sent to all parties entitled under the Act to receive such a notice. This will generally be sent within 7 days of the Board's decision.

Certain parties are also entitled to require a written statement of the Board's reasons for its decision. A request for a statement of reasons must generally be made within 14 days of the date of receiving notice of the determination.

Details of parties entitled to receive a notice of determination and of parties who may request a statement of reasons can be found at :

http://www.highland.gov.uk/downloads/file/11669/information_note_notices_of_determination_and_statement_of_reasons

Details of parties who may appeal particular decisions of the Board can be found at:

http://www.highland.gov.uk/downloads/file/11668/information_note_right_of_appeal

4.2 Gambling Act 2005 hearings

In respect of gambling premises-related hearings, as soon as reasonably practical after the hearing, a notice of the grant or refusal of an application or of a decision on a review must be sent to all parties entitled under the Act to receive such notice. These notices must include statements of reasons so, unlike the position under the Licensing (Scotland) Act 2005, there is no separate process for requesting statements of reasons.

Details of parties entitled to receive a notice of grant or refusal of an application or a notice of a decision on a review of a premises licence and details of parties who may appeal particular decisions of the Board can be found at

http://www.highland.gov.uk/downloads/file/11673/gambling_information_note_notices_of_decision_and_rights_of_appeal

LICENSING (SCOTLAND) ACT 2005 - APPLICATIONS SUBJECT TO HEARINGS¹**Mandatory hearings****Premises Licence Applications**

A hearing is required under section 23(2) even where no objections have been received and the application is in line with the Board's current Policy Statement. The hearing must be held within 119 days of the last date for lodging objections or representations (Reg 12).

Major Variations of Premises Licences

A hearing is required under section 30(3) even where no objections have been received and the application is in line with the Board's current Policy Statement. The hearing must be held within 119 days of the last date for lodging objections or representations (Reg 12).

Applications for Transfer of a Premises Licence under sections 33 or 34

A hearing is required under section 33(9) where (a) the Board receives notice from Police Scotland that the transferee (or in the case of a s34 transfer, the applicant) has relevant convictions **or** (b) where Police Scotland recommend that the application for transfer be refused on the grounds that refusal is necessary for the purposes of any of the licensing objectives (irrespective of whether the transferee has convictions or not). The hearing must be held within 42 days of the date on which the Board receives the notice from Police Scotland (Reg 13).

Premises Licence Review Proposals or Applications

A hearing is required under section 38(1) to consider and determine the proposal or application unless the application is rejected by the Clerk under section 36(6) as vexatious, frivolous or not disclosing any matter relevant to a ground of review. The hearing must be held within 42 days of the date on which the Board made the Review Proposal or the Board received the Review Application (Reg 13).

Applications for Personal Licences (including renewal applications)

A hearing is required under section 74(5) where the Board has received from Police Scotland a notice under section 73(3)(a) or (b) which includes a recommendation that refusal of the application is necessary for the purposes of any of the licensing objectives. No deadline for holding the hearing is fixed in the Act or Regulations.

¹ References to sections are to sections of the Licensing (Scotland) Act 2005. References to Regulations ("Regs") are to the Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453)

Existing personal licences

A hearing is required in relation to an existing personal licence in the following circumstances:

- Under section 83(7) where the Board receives notice of, or becomes aware of, the licence holder having been convicted of a relevant offence² or a foreign offence and Police Scotland then issue a notice under section 83(4)(b) confirming the existence of a conviction and that it relates to a relevant offence. The hearing must be held within 42 days of the Board's receiving the notice from Police Scotland (Reg 13).
- Under section 84(3) where the Board makes a finding, in the course of a premises licence review hearing, that a licence holder, while working in the premises to which the premises licence relates, acted in a manner which was inconsistent with any of the licensing objectives. No deadline for holding the hearing is fixed in the Act or Regs.
- Under section 84(5) where the Board receives from another Licensing Board a notice under section 84(3)(b) recommending revocation, suspension or endorsement of the personal licence, the other Licensing Board having made a finding, in the course of a premises licence review, that the personal licence holder acted in a manner inconsistent with any of the licensing objectives and where the personal licence holder is currently working in the Board's area or where the personal licence was issued by the Board. No deadline for holding the hearing is fixed by the Act or Regs.
- Under section 84A(2) where the Board receives a report from Police Scotland advising that they consider the personal licence holder has acted in a manner inconsistent with any of the licensing objectives. No deadline for holding the hearing is fixed by the Act or Regs.
- Under section 86(1) where 3 endorsements have been made in any personal licence. No deadline for holding the hearing is fixed by the Act or Regs.

Discretionary hearings:

- In relation to applications for personal licences (or renewals), where the Board receives from Police Scotland a notice under section 73(3)(b) confirming convictions for relevant offences or foreign offences but not including any recommendation that the application be refused, the Act allows (but does not require) the Board to hold a hearing. The Board's current practice is generally to hold a hearing in these circumstances. If the Board decides not to hold a hearing the Board must grant the application.
- The Act also allows the Board to hold hearings on applications for occasional licences or extended hours. However, the Clerk has delegated power to grant extended hours and occasional licence applications if they are in line with policy and no objection or representation has been received. If the application is outwith policy or there is an objection or representation, the application is referred to the Convener who then has power to grant or refuse. It is not the Convener's practice to hold a hearing prior to reaching a decision to grant or refuse although before reaching his or her decision the Convener must allow the applicant the opportunity to comment on any notice of objection or representation received and on the LSO's report.

² "Relevant offences" for the purposes of the Act are listed at Appendix 3 of the Board's Policy Statement 2013-16

ATTENDING A HEARING : FREQUENTLY ASKED QUESTIONS**Q. Where will the hearing take place?**

A. Meetings of the Highland Licensing Board are normally held in the Council Chamber, Highland Council Headquarters, Glenurquhart Road, Inverness, IV3 5NX. Should a different venue or location be required, you will be advised of this in advance.

Q. Is there car parking available?

A. There is a car park at the rear of the Council HQ building which can be accessed from Glenurquhart Road. Please note that this car park can become very full and spaces unfortunately cannot be guaranteed.

Q. Where should I report to?

A. You should report to the main reception on the ground floor of the Council HQ building and advise the receptionist that you are attending the Licensing Board meeting. They will then direct you to the foyer which is on the 1st floor of the building. On entering the foyer, there is another reception desk on your left and the entrance to the Council Chamber is on your right. Officers from the Licensing Service will be present in the foyer before the meeting starts and will be able to help you with any queries you may have.

Q. Is there lift access to the Chamber?

A. There is lift access to the Chamber foyer from which there is direct access to the Chamber with no steps or stairs. Should you require to use the lift, please report to the main reception on the ground floor and someone will direct or show you to the lift.

Q. Are there facilities for the hard of hearing?

A. Yes, there is a loop system in place in the Chamber together with headphones if required. If you require to use these, please speak to the receptionist in the foyer outside the Chamber or the administrative officer in the Chamber before the meeting starts and he or she will make the necessary arrangements.

Q. Where do I sit in the Chamber?

A. As you enter the Chamber you will see the top table directly in front of you. This is where the Convener, the Vice Convener and the Clerk to the Board sit. The seating immediately to the right of the top table is where the members of the Board sit and the seating immediately to the left of the top table is where any other Council Officers attending the meeting generally sit. You may sit anywhere else in the Chamber. If you are intending to speak on the item for which you are attending, choose a seat which has a microphone on the desk in front of it.

Q. How long will it take before my application/item is heard?

A. The Board meeting normally commences at 12.30 pm or immediately following the meeting of the Highland Licensing Committee, whichever is the later. It is difficult to advise how long each application/agenda item will take to be determined as the length of the discussion will vary. You are welcome to sit and watch other items being considered while you wait for your item to be heard. The agenda will be available on the Highland Council website at least three working days before the meeting and this will give you an indication of the order in which applications are to be heard. This can be accessed at:
http://www.highland.gov.uk/info/20003/committee_information/488/highland_licensing_board_hlb

Q. Who sits on the Licensing Board?

A. There are 10 Councillors who sit on the Board. The quorum for the meeting is 5, so not all Board members need be present at every meeting. If any member present has a declarable interest in any particular item on the agenda, they will leave the Chamber for the duration of that item.

Q. Who else will be present at the meeting?

A. The Clerk to the Board will sit with the Convener and Vice Convener at the top table. The Clerk provides the Board with advice on procedural and legal issues. Also present will be a member of the administration service who will operate the webcasting and electronic voting system and take a minute of the meeting. Other officers, such as the Depute Clerk to the Board and the Licensing Standards Officers, may also be present, together with representatives from Police Scotland and all of the applicants, objectors and licence holders, some of whom will have their legal representatives or other agents with them. It is usual also for one or two members of the press to attend.

Q. Will the meeting be held in public?

A. It is a requirement of the Licensing (Scotland) Act 2005 that meetings of a Licensing Board must be held in public although the Board may, before deciding any matter, conduct their deliberations in private.

Q. Will the meeting be recorded/webcast?

A. Yes, the meeting (excluding any private deliberations) will be webcast live on the internet. A recording of the meeting will also be available to view on the Council's website for a period of 12 months after the meeting. In accordance with the Council's Webcasting Protocol, at the start of the meeting the Chair will advise all present that the meeting is being webcast. The webcast camera focuses on the person speaking at any point in time and this is triggered by that person switching on their individual microphone on the desk in front of their seat. Generally the public seating areas will not be filmed. However, by entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting.

ORDER OF SPEAKERS AT APPLICATIONS AND REVIEW HEARINGS³

Applications hearings

1. The Convener introduces the agenda item and identifies who is present for the hearing and who intends to speak. If there are no late letters of representation or objection and no spent convictions to be considered, the order of proceedings will begin from paragraph 4. below.
2. Preliminary proceedings where late letters of representation or objection have been received⁴

The Clerk will advise the Board if there has been any late letter of representation or objection. If the Clerk does so advise, then before the Board members can be made aware of the content of the late letter, they must be satisfied that the failure to lodge the letter or representation was due to a mistake, oversight or other excusable cause. If there is no-one present to explain why the letter was lodged late and no written explanation has been provided by the author of the letter, the Board will agree not to have regard to the late letter. If there is someone present, however, the Convener will invite them to explain why the letter was lodged late. After the person has given their explanation, the Board members may ask them questions. The applicant (to whom the late representation/objection will already have been copied) will then be asked if they have any objection to the late representation/objection being accepted for consideration and the Board members may ask the applicant questions on this issue. The Board will then decide whether to accept the late representation/objection for consideration, having taken all submissions on this issue into account. If the Board does agree to consider a late letter of representation/objection, the letter will at that point be circulated by the Clerk to the Board members who will then be given time to read its content.

3. Preliminary proceedings where Police Scotland wish to refer to spent convictions

The Clerk will advise the Board if the Police have given notice that the applicant has spent convictions and that they wish those spent convictions to be taken into consideration. The Board may only hear details of and have regard to those spent convictions if first satisfied that justice cannot be done without the Board considering the spent convictions. The Convener will therefore invite the Police representative to explain why they consider that justice cannot be done without the Board considering the spent convictions. Board members may ask the Police representative questions but the Police may not disclose, at that stage, more than the barest facts about each conviction (i.e. the general nature of the offence, the relative age of the conviction and its relative seriousness). The applicant will then be asked if they have any objection to the spent convictions being disclosed to and considered by the Board and, if so, without disclosing details of the spent convictions themselves, to explain their reason for objecting. The Board will then decide whether they are satisfied that justice cannot be done without the spent convictions to be disclosed to and considered by them. If they are so satisfied, the Clerk will at that point circulate the list of spent convictions to the Board.

³ Please note also that the order of speakers set out in this Appendix is indicative of the order generally followed but that this may be varied at the Convener's discretion if he or she considers it necessary to do so in the interest of fairness to all parties.

⁴ Paragraph 2 of this Appendix applies only in the case of hearings under the Licensing (Scotland) Act 2005.

4. The main hearing

- 4.1** The applicant or his/her representative is invited to put his/her case to the Board in support of the application and to address the points raised in any letters of representation or objection which the Board will be considering⁵.
- 4.2** Persons present who have submitted representations or objections which the Board will be considering (the “objectors”) are given the opportunity to ask the applicant relevant questions⁶.
- 4.3** The Board members are given the opportunity to ask the applicant relevant questions.
- 4.4** The objectors are invited to put their case to the Board.
- 4.5** The applicant is given the opportunity to ask the objectors relevant questions.
- 4.6** The Board members are given the opportunity to ask the objectors relevant questions.
- 4.7** The applicant is invited to sum up.
- 4.8** The objectors are invited to sum up.
- 4.9** The hearing part of the process ends and Board members commence their deliberation and then make their decision (see further details at paragraph 3.4 of the main Guidance Note).

⁵ If there are no letters of representation or objection, only paragraphs 4, 6 and 10 will apply.

⁶ If there are objectors but none of them attends or is represented at the hearing, only paragraphs 4, 6 and 10 will apply.

Review hearings^{7,8}

1. The Convener introduces the agenda item and identifies who is present for the hearing and who intends to speak.
2. The complainer⁸ presents his/her case. Where the complainer is effectively the Board (eg in reviews triggered by the Board itself), the Convener will explain the grounds for review and the evidential basis for those grounds, details of which will already have been sent to the licence holder.
3. [Any person who has made timeous representations on the review proposal or application is then given the opportunity to ask the complainer questions.]
4. The licence holder and then the Board members are then given the opportunity to ask the complainer relevant questions.
5. [Any person who has made timeous representations on the review proposal or application presents their representations.]
6. [The complainer, the licence holder and then the Board members are then given the opportunity to ask the persons who have made representations questions]
7. The licence holder then presents their submissions in response.
8. The complainer, [the persons who have made representations] and then the Board members are then given the opportunity to ask the licence holder questions.
9. Each party is then given the opportunity to sum up, with the licence holder having the right to sum up last.
10. The hearing part of the process ends and Board members commence their deliberation and then make their decision (see paragraph 3.4 of the main Guidance Note).

⁷ The term “review hearing” is used in this Appendix to mean any type of hearing in relation to an existing licence (be it a premises or a personal licence) which has been triggered, in respect of Licensing (Scotland) Act hearings, by a competent review proposal or application, a relevant police notice, a notice received from another Licensing Board or a finding made by the Highland Licensing Board at a premises licence review hearing or, in respect of Gambling Act review hearings, by a review proposal or application. Details of the various review hearing “triggers” under the Licensing (Scotland) Act 2005 are set out at Appendix 1. The term “complainer” is used in this Appendix to mean the party whose proposal, application, notice or finding has triggered the review hearing.

⁸ The sections in square brackets in the review hearings procedure apply only in the case of review hearings under the Gambling Act 2005