

CENTRAL ABERDEENSHIRE LICENSING BOARD

Licensing (Scotland) Act 2005 The Occasional Licence (Scotland) Regulations 2007

Guidance on Applying for an Occasional Licence

All alcohol licensing law in Scotland will change from 1st September 2009 when the Licensing (Scotland) Act 2005 comes into force.

Any applications under the 1976 Act lodged before 1st August 2009 for occasional licences and occasional permission for events taking place between 1st September 2009 and 18th October 2009 will be honoured as being valid licences after 1st September 2009 to allow the new system to bed in.

From 1st August 2009 applications for events from 1st September 2009 onwards will require to be lodged as applications under the 2005 Act.

The Licensing (Scotland) Act 2005 does away with occasional permissions and instead sets out a new system of occasional licences. This Guidance Note is designed to assist you in determining what an occasional licence is, who should apply, how to apply, what the procedure is and what other licences or permissions may be required from 1st September 2009.

What is an Occasional Licence?

An occasional licence authorises the sale of alcohol on premises that are not licensed premises.

A registered club can also use an occasional licence to authorise the sale of alcohol on their premises for members of the public, in addition to club members and their bona fide guests.

Who Can Apply for An Occasional Licence?

An application for an occasional licence can be made by -

- The holder of a premises licence
- The holder of a personal licence
- A representative of any voluntary organisation (this includes a registered club)

How do I Apply?

The application forms for occasional licences are set by regulation under the Licensing (Scotland) Act 2005 and are more detailed than the current application forms for occasional licences and occasional permissions. Part of the reason for this is that there is a requirement on licensing boards to include more detailed information on the actual licence, particularly in relation to the admission of children and young persons.

The information to be included on application forms includes the following:-

- (a) The name and address of the applicant;
- (b) A description of the premises in respect of which the application is made;
- (c) A description of the activities to be carried on in the premises;
- (d) A statement of the period during which the licence is to have effect;
- (e) A statement of the times during which alcohol is to be sold on the premises;
- (f) A statement as to whether alcohol is to be sold for consumption on the premises, off the premises, or both;
- (g) A statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises;
- (h) Where alcohol is to be sold for consumption on the premises, a statement as to whether children (0-15 years) or young persons (16 & 17 years) are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry, including in particular -
 - (i) The ages of the children or young persons to be allowed entry**;
 - (ii) The times at which they are to be allowed entry**; and
 - (iii) The parts of the premises to which they are to be allowed entry**
- (i) The conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found.

** applicants require to distinguish between children and young persons

An application form is attached to these Guidance Notes for your information.

Applicants should note that the Board is not currently in a position to accept electronic applications.

How Long Does an Occasional Licence Last?

An occasional licence can only last up to a maximum of 14 days per "occasion".

The holders of a premises licence or a personal licence may make unlimited applications.

There are restrictions on the number of applications a voluntary organisation/registered club can make. In any period of 12 months -

- 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, in any period of 12 months, the total number of days on which occasional licences issued in respect of the voluntary organisation/registered club have effect does not exceed 56 days.

What hours Can I apply for?

The Board considers the commencement of the sale of alcohol shall not be earlier than 9.00a.m. For the terminal hour beyond which alcohol must not be sold on the premises, the Board considers 1.00 am to be appropriate.

Applicants seeking licensed hours for times outwith the Board's Policy require to demonstrate to the Board that the additional requested hours are appropriate in the circumstances.

What Type of Event Needs a Licence?

The Board considers activities such as dances, discos, dinner dances, wedding receptions, parties - where a disco or band is provided, or beer tents at a larger event such as a gala or music festival, are generally acceptable for granting an occasional licence. This list is not exhaustive.

In respect of applications made by voluntary organisations/registered clubs, there is no stipulation under the Licensing (Scotland) Act 2005 that applications can only be made for particular events 'arising from or related to the activities of the voluntary organisation' as there is under the Licensing (Scotland) Act 1976. However, please draw your attention to the section on mandatory conditions that must be attached to occasional licences for voluntary organisations under the 2005 Act. There is a condition which stipulates that 'where a voluntary organisation is the holder of an occasional licence, alcohol can only be sold where the event is connected with the voluntary organisation's activities.' As with all licence conditions, breach of the condition could lead to criminal proceedings.

Applications for fund-raising dances and other events connected to the activities of a voluntary organisation/registered club will be regarded by the Board as a competent type of application.

The Board may reject any application as incompetent where the application cannot comply with one or more of the licence conditions.

An application may be refused where one of the grounds of refusal (referred to below) apply.

When Should I apply for a Licence?

Applications must be lodged **no later than six weeks before the event**, and earlier than that if possible, particularly if it is anticipated that the application will attract objections or representations.

The Licensing (Scotland) Act 2005 stipulates the consultation period for occasional licence applications.

Where there are no objections and/or adverse representations, it is anticipated that applications will be processed and issued within 28 days.

Where there are objections and/or adverse representations, the applicant will be given an opportunity to comment on these. The application may require to be considered at a hearing of the Licensing Board. The Board has 42 days from the date of receipt of the application to hold such a hearing, hence the requirement for applications to be lodged no later than six weeks before the event.

How Much Does it Cost?

The application fee for an occasional licence is £10. Cheques or postal orders should be made payable to 'Aberdeenshire Council'. Please do not send cash through the post.

The Board does not currently have facilities to accept payment by means of a credit or debit card.

Applicants should note that the application fee is not refundable if the application is refused, cannot be processed in time, or if the event is subsequently cancelled after a licence has been issued.

Will I need to submit anything else with my application?

All applicants must submit a document listing how they will comply with the **5 licensing objectives** during the event.

Where an admission fee is charged for the event, or where people are asked for a donation to gain entry, the event will also require a **public entertainment licence** under the Civic Government (Scotland) Act 1982.¹ (unless there is a public entertainment licence already in place for the premises where the event is to be held).

Applications take approximately 28 days to process but should ideally be lodged at the same time as the occasional licence application. The fee for a public entertainment licence is £90.

The licensing office will be able to confirm whether you need a public entertainment licence, where you are not sure.

What Happens Once I have lodged my application?

Processing

The Board must give a copy of your application to the Chief Constable and the Licensing Standards Officer. The Board may also give notice of the application to Building Standards, Environmental Health and the Fire Service if appropriate.

The Chief Constable and the Licensing Standards Officer must submit their views to the Board within 21 days.

¹ Note: once the Criminal Justice Bill has been approved by the Scottish Parliament, even an event that is free of charge will require a public entertainment licence.

The Licensing Standards officer can submit comments which include recommendations for additional conditions to be attached to the licence by the Board.

The Chief Constable may, if he considers it necessary for the purposes of the crime prevention objective, make a recommendation to the Board that the application be refused.

Any person may, within 7 days, object to the application on any ground relevant to one of the grounds of refusal.

Any person may, within 7 days, make representation to the Board concerning the application including representations in support of the application and in respect of conditions which the person considers should be imposed.

Publicity

At the same time as the Board gives notice of an application to the Chief Constable and the Licensing Standards Officer the Board must publish details of the application for occasional licence on its website at www.aberdeenshire.gov.uk . Any person may object or lodge a representation within 7 days of the application being published on the website. After the seven day period, the Board has a discretion as to whether or not to consider any comments received.

How Will the Application be Determined?

Where no objections, representations, or notices are received from the police, the licensing standards officer or other objectors, the application will be granted by the Clerk under delegated authority and the licence will be issued.

If, however, there are objections and/or representations made in respect of the application, the Board must, within seven days of receiving the objection/representations provide the applicant with any information relevant to their application raised in such objections/representations or made in any notice lodged by the Chief Constable or the Licensing Standards Officer. The applicant must be allowed to comment on the objections or representations before the application is determined. The Board will do this by asking for a written response from the applicant in the first instance.

If it is possible to reach agreement on the application between all parties at this stage, leading to any objections/representations being withdrawn, the application will be granted by the Clerk under delegated authority and the licence will be issued.

If agreement cannot be reached, the Board must consider if any of the grounds of refusal apply and may hold a hearing to consider the application. All relevant parties will be asked to attend the hearing. The hearing must be held within 42 days of the date of receipt of the application. At the hearing, the Board will determine whether the application should be granted or refused. If the Board decides that none of the grounds of refusal apply the Board must grant the application. If the Board decides that one or more of the grounds of refusal apply the Board must refuse the application.

The Board is required to give written notice of its decision to all relevant parties within 7 days of the date of the decision.

What are the Grounds of Refusal?

The grounds of refusal are -

- (a) That the premises are excluded premises
- (b) That the application must be refused under Section 64(2) [24-hour opening] or Section 65(3) [outwith the trading hours for off sales set under the Act - 10.00a.m. - 10.00p.m.]
- (c) That the Board considers the granting of the application would be inconsistent with one or more of the licensing objectives. The objectives are -
 - Prevention of crime and disorder
 - Securing public safety
 - Prevention of public nuisance
 - Protection and improvement of public health
 - Protection of children from harm
- (d) That, having regard to -
 - (i) The nature of the activities proposed to be carried on in the premises to which the application relates;
 - (ii) The location, character and condition of the premises; and
 - (iii) The persons likely to frequent the premisesThe Board considers that the premises are unsuitable for use for the sale of alcohol.

What Conditions Will Attach to the Licence?

Schedule 4 of the Licensing (Scotland) 2005 lists the following mandatory conditions that must be applied to every occasional licence -

“Interpretation

- 1 In this schedule, “the premises” means, in relation to any occasional licence, the premises specified in the licence.

Compliance with licence

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(1) Alcohol may be sold on the premises only in accordance with the terms of the licence.

(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).

- 3 Any other activity to be carried on in the premises may be carried on only in accordance with the description of the activity contained in the licence.

Authorisation of sales of alcohol

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(1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.

- (2) Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically) by the holder of a personal licence.

Voluntary organisations

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- (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.
- (2) Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation's activities.

Pricing of alcohol

6 Where the price at which any alcohol sold on the premises is varied -

- (a) the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensed hours, and
- (b) no further variation of the price at which that or any other alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.

Irresponsible drinks promotions

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- (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
- (2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it -
 - (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,
 - (b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),
 - (c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,
 - (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
 - (e) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,
 - (f) is based on the strength of any alcohol,
 - (g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
 - (h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
- (3) Paragraphs (b) to (d) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.

- (4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to -
- (a) add further descriptions of drinks promotions,
 - (b) modify any of the descriptions of drinks promotions for the time being listed in it, or
 - (c) extend or restrict the application of any of those descriptions of drinks promotions.
- (5) In this paragraph, “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

Provision of non-alcoholic drinks

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- (1) The conditions specified in this paragraph apply only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.
- (2) Tap water fit for drinking must be provided free of charge on request.
- (3) Other non-alcoholic drinks must be available for purchase at a reasonable price.”

The Board may also impose such other conditions as they consider necessary or expedient for the purpose of any of the licensing objectives, but may not -

- impose any condition which is inconsistent with any of the mandatory conditions or any further conditions imposed by the Scottish Ministers which would have the effect of making any of such conditions more onerous; or
- which relates to a matter such as planning, building standards or food hygiene, which is regulated under another enactment.

The Board will consider on an individual basis whether it is necessary or expedient to impose additional conditions, to promote one or more of the licensing objectives, or, otherwise to give effect to the provisions of their policy statement or to the provisions of the Act. The decision whether to impose a condition will be made on an objective basis, any representations made and any other relevant information available to the Board when considering the application. The Board will seek to avoid the imposition of disproportionate conditions.

Note on Stewarding

Organisers of events should note that from 1st November 2007, when the relevant provisions of the Private Security Industry Act 2001 came into force, there is mandatory licensing of the private security industry. This means that it is an offence to employ unlicensed door stewards or “bouncers” at events. Volunteers who carry out these roles are exempt from the requirements of the Act but organisers may wish to take independent advice on the legality of their security arrangements at events. For further information consult the following website -

<http://www.the-sia.org.uk/home>

Where Can I Get Further Information?

Further information is available from the Clerk at -

Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3WA

Legal Post LP-3, Inverurie

Telephone 01467 628208

Fax 01467 628500

E-mail shirley.watt@aberdeenshire.gov.uk

Information can also be obtained from Aberdeenshire Council's website at -

www.aberdeenshire.gov.uk

click on the tab in the left hand column for legal services
click on the tab in the left hand column for licensing

Application forms, Guidance and copies of the Board's Policy Statement can be found on the licensing page by clicking on the appropriate link. Applications for occasional licences will also be advertised on this page.