

ABERDEENSHIRE LICENSING BOARD

North Division

Licensing (Scotland) Act 2005

Objections, Representations and Statements of Support.

General

This document is intended to help those persons who wish to object to, comment on, or lodge support for an application for a licence to sell alcohol under the Licensing (Scotland) Act 2005 ["the 2005 Act"]. It is also a useful guide for applicants on what constitutes an objection or representation. This document does not deal with making Complaints in respect of premises that already hold a licence under the 2005 Act.

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In no event does the Aberdeenshire Licensing Boards or Aberdeenshire Council or their employees or agents offer legal advice or accept liability of any description, including liability for negligence for any damages or losses (including, without limitation, loss of business, revenue, profits, or consequential loss) whatsoever resulting howsoever, including but not limited to the use of or inability to use this information. We accept no responsibility for keeping the information in these pages up to date or liability for failure to do so. IF YOU ARE IN ANY DOUBT YOU MUST SEEK ADVICE FROM YOUR SOLICITOR.

Premises Licence

Where the Board receives a premises licence application, once it has been validated, the Board must give notice of it, together with a copy of the application, operating plan and layout plan to:

- Each person having a notifiable interest in land – notifiable interest is defined in the legislation generally as being anyone who occupies property within a 4 metre radius in any direction from any boundary of the premises;
- Any community council within whose area the premises are situated;
- The Council within whose area the premises are situated – ie planning, building standards, environmental health and the Licensing Standards Officer;
- The appropriate chief Constable; and
- The Fire Authority

The Board must also advertise the application at www.aberdeenshire.gov.uk/licensing .

Both the notices and the advert will set a date by which objections or representations can be lodged with the Clerk to the Board.

Who Can Object?

When an application is made for a premises licence under the 2005 Act, Section 22 provides that –

“Any person may, by notice to the Licensing Board –

- (a) object to the application on any ground relevant to one of the grounds for refusal... or*
- (b) make representations to the Board concerning the application, including, in particular, representations –*
 - i. in support of the application,*
 - ii. as to modifications which the person considers should be made to the operating plan accompanying the application, or*
 - iii. as to conditions which the person considers should be imposed.”*

A copy of Sections 22 and 23 of the 2005 Act is attached to this document for information purposes.

The definition of “any person” is clearly very wide and is not limited to those in the immediate vicinity or those that have business interests affected by the application.

However, while there is no requirement to show a particular interest, the Board can reject **frivolous** or **vexatious** objections/representations and can also recover the cost of dealing with frivolous or vexatious objections/representations from the person(s) making them. You should, therefore, be sure of the grounds before considering an objection or representation. Please also see “Relationships with other Regulatory Regimes” below.

What are Objections and Representations?

General

The Board is concerned with assessing the suitability of the premises for the sale of alcohol. Matters that you wish to raise must be on relevant grounds and must relate to the sale of alcohol.

OBJECTIONS

An Objection is opposing the granting of a licence at all.

Objections can **only** be on grounds relevant to the grounds for refusal. Therefore, if you wish to object to the grant of a licence then you must relate your objections to one or more of the grounds for refusal. These are:-

1. That the application premises are excluded premises in terms of Section 123 of the 2005 Act – that is they are premises on land used or acquired for the purposes of a special road or premises being used as a petrol station/garage.
2. That in terms of Section 25(2) of the 2005 Act an application must be refused because the applicant has had a premises licence refused in respect of the same premises within the last year.

3. That in terms of Section 64(2) of the 2005 Act an application must be refused because the hours for the sale of alcohol for consumption off the premises fall outwith the times 10.00a.m. – 10.00p.m.
4. That the granting of the application would be inconsistent with one or more of the licensing objectives. The licensing objectives are:-
 - **Prevention of crime and disorder**
 - **Prevention of public nuisance**
 - **Securing public safety**
 - **Protecting and improving public health**
 - **Protecting children from harm**
5. That, having regard to the nature of the activities proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises, the Board considers that the premises are unsuitable for use for the sale of alcohol; and
6. That there is overprovision. However, you should note that during transition (1st February 2008 – 1st September 2009) premises entitled to grandfather rights will be exempt from any assessment of overprovision. This will apply to the majority of licensed premises currently licensed to sell alcohol under the Licensing (Scotland) Act 1976.

Police Objections

The Police have limited powers to object. In fact, the appropriate Chief Constable can only object to a premises licence application on one ground, that is, the Chief Constable has reason to believe that the applicant or any connected person is involved in serious organised crime and, by reason of that involvement, the Chief Constable considers it is necessary for the purposes of the crime prevention objective that the application should be refused.

You should note that the Chief Constable, even if he cannot object, can still lodge representations as “any person”.

REPRESENTATIONS

Representations can be virtually anything. They do not object to the granting of a licence in principle. They are more likely to be relevant to suggested modifications to the operating plan or recommendations for conditions to be attached to the licence to make the application acceptable in the eyes of the person(s) making the representation. Representations can be made that support the application as well.

Representations should be relevant to one or more of the licensing objectives if you wish to suggest amendments or conditions. [The objectives are highlighted in bold above]

If you wish to comment on any application to the Board you should be sure of whether you wish to object to the licence being issued, or whether you wish to make representations about possible changes.

Relationships with Other Regulatory Regimes

As outlined above, matters raised must be on relevant grounds and must relate to the sale of alcohol. Inevitably, there will be a cross-over between the licensing objectives and matters relevant to other regulatory regimes e.g. noise, planning, smoking, unsafe premises, fire prevention etc. Matters under these headings all relate to the licensing objectives. However, they are also covered by other legislation and other regulators.

The Scottish Government has made it clear that the licensing system must not duplicate other regulatory regimes. This means that the Board will **not** allow licensing to be used simply as a means of putting additional pressure on an applicant where matters complained of should be dealt with by another regulator.

The Board will reject any objection or representation as being vexatious or frivolous where it considers that persons are using the licensing system to their own ends rather than addressing the licensing objectives or other grounds of refusal.

How do I make an Objection or Representation?

Objections and representations must be made in writing and must be addressed to:

The Clerk to the Board
Aberdeenshire Council
St. Leonard's
Sandyhill Road,
Banff
AB45 1BH

The Board would prefer you to use their pro-forma objection/representation, a copy of which is either attached to this guidance or is available on request 01261 813320. It is also available on the Council's website at www.aberdeenshire.gov.uk/licensing .

Objections and representations must be received on time by the Clerk. That means that objections/representations must be received within the time period set out in both the premises licence advert and the premises notice of application. Proof of posting is not proof of delivery and late items will not be accepted.

What Happens if I Object or Make a Representation?

Firstly, the objection or representation will be screened to determine whether it is valid i.e. relevant grounds are disclosed and it is not vexatious or frivolous. Then, if the objection/representation is accepted, the Board will ensure that a copy is delivered to the application for comment. It is not necessary for you to deliver a copy to the applicant yourself.

All **objections** will be dealt with at a meeting of the Board with the attendance of all parties. You will be called to a meeting in due course and you will be provided with details of the hearing procedures at that time. You are referred to the Board's Policy Statement under the 2005 Act for further information which is available at www.aberdeenshire.gov.uk/licensing .

Where **representations** are concerned, we will first review the applicant's response. It may be possible to agree amendments to the operating plan or conditions for the licence that will be acceptable to all parties. In such a situation, the matter will be put before the Board to sanction any agreement without the need for the parties to attend. Otherwise, the matter will again be dealt with at a full hearing, with all parties required to attend.

The Board has six months in which to process and issue a premises licence. As a result, it may be some time before you are called to a Hearing of the Board.

It is the aim of the Board during transition to deal with as many matters as possible without the need for hearings. This is due to the demands on the Board given the volume of applications being dealt with during transition.

How Will the Board Decide?

Where an **objection** has been lodged, the Board must consider if any ground of refusal applies. If the Board finds that grounds of refusal apply then the licence must be refused. However, if the Board finds that no grounds of refusal apply then the Board must grant the licence.

Where **representations** have been made, the Board must still consider if any ground of refusal applies, as outlined above. If not, the Board will then go on to consider whether it would be appropriate to address matters by an amendment to the operating plan or placing a condition on the licence.

SECTIONS 22 and 23 OF THE LICENSING (SCOTLAND) ACT 2005

22 Objections and representations

- (1) Where a premises licence application is made to a Licensing Board, any person may, by notice to the Licensing Board—
 - (a) object to the application on any ground relevant to one of the grounds for refusal specified in section 23(5), or
 - (b) make representations to the Board concerning the application, including, in particular, representations—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.
- (2) The appropriate chief constable may, under subsection (1)(a), object to a premises licence application only on the ground that—
 - (a) the chief constable has reason to believe that—
 - (i) the applicant, or
 - (ii) in the cases where the applicant is neither an individual nor a council or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person,
is involved in serious organised crime, and
 - (b) by reason of that involvement, the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused.
- (3) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any premises licence application made to the Board, the Board must—
 - (a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and
 - (b) have regard to the objection or representation in determining the application, unless the Board rejects the notice under subsection (4).
- (4) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the Board considers the objection or representation is frivolous or vexatious.
- (5) Where a Licensing Board rejects a notice of objection or representation under subsection (4), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.
- (6) In any proceedings by a Licensing Board for the recovery of expenses under subsection (5), a copy of any minute of proceedings of the Licensing Board—
 - (a) recording the Board's rejection of the notice and the grounds for the rejection, and
 - (b) certified by the clerk of the Board to be a true copy,
is sufficient evidence of the rejection and of the establishment of the ground for rejection.

23 Determination of premises licence application

- (1) A premises licence application received by a Licensing Board is to be determined in accordance with this section.
- (2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (3) In considering and determining the application, the Board must take account of the documents accompanying the application under section 20(2)(b).
- (4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—
 - (a) if none of them applies, the Board must grant the application, or
 - (b) if any of them applies, the Board must refuse the application.
- (5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2), 64(2) or 65(3),
 - (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
 - (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
 - (e) that, having regard to the number and capacity of—
 - (i) licensed premises, or
 - (ii) licensed premises of the same or similar description as the subject premises,in the locality in which the subject premises are situated, 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.
- (6) In considering, for the purposes of the ground for refusal specified in subsection (5)(c), whether the granting of the application would be inconsistent—
 - (a) with the crime prevention objective, the Licensing Board must, in particular, take into account—
 - (i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21,
 - (ii) any recommendation of the chief constable included in the notice under subsection (5) of that section, and
 - (b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 21.

- (7) Where the Licensing Board considers that—
- (a) they would refuse the application as made, but
 - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,
- the Board must, if the applicant accepts the proposed modification, grant the application as modified.
- (8) Where the Licensing Board refuses the application—
- (a) the Board must specify the ground for refusal, and
 - (b) if the ground for refusal is that specified in subsection (5)(c), the Board must specify the licensing objective or objectives in question.
- (9) In subsection (5)(e), references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.