

ABERDEENSHIRE LICENSING BOARDS

Licensing (Scotland) Act 2005

Guidance on Applying for a Premises Licence/Provisional Premises Licence

This Guidance Note offers guidance on how to apply for a premises licence, or provisional premises licence, to sell alcohol at your premises.

The Licensing (Scotland) Act 2005 introduced a two-tier licensing system. Under the system, the premises selling alcohol require to be licensed and the persons working in licensed premises require to be licensed. This note offers guidance on how to apply for licences for premises selling alcohol. You should also refer to the Board's Guidance on how to apply for personal licences.

Applicants should also familiarise themselves fully with the [Board's Policy Statement](#) prior to making an application.

Why do I need a Premises Licence

Section 1 of the Licensing (Scotland) Act 2005 makes it an offence for alcohol to be sold in any premises that does not have a premises licence or an occasional licence.

This means that anyone wishing to lawfully sell alcohol from any premises in Scotland needs to obtain a premises licence.

What is a Premises Licence?

A premises licence authorises the holder of the licence to sell alcohol for consumption on the premises, off the premises or both.

The licence is tailored to the individual premises by means of an operating plan, licensing objectives risk assessment and a layout plan.

"Premises" means any place and include a vehicle, vessel or moveable structure.

What is a Provisional Premises Licence?

A person can apply for a provisional premises licence for premises that, at the time of making the application, are yet to be, or are in the course of being, constructed or converted for use as licensed premises.

Premises that are granted a provisional premises licence cannot be used for the sale of alcohol until such time as the work to the premises has been completed and the licence holder has been "confirmed" by the Board.

Do all premises require a Premises Licence?

Some premises are excluded from holding a licence and some premises are exempt from holding a licence.

Excluded Premises

Motorway service stations are prohibited from holding a premises licence.

Premises used as a petrol station, or parts of a premises used as a petrol station, are prohibited from holding a premises licence. Premises are used as a petrol station if they are used for:-

- The retail sale of petrol
- The retail sale of diesel
- The sale of motor vehicles, and
- The maintenance of motor vehicles.

However, if an applicant can demonstrate that persons resident in locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of petrol/diesel or groceries (where the premises are, or are to be, used for the retail sale of groceries) then the Board can determine that the premises are not to be treated as excluded under the 2005 Act and the premises may then apply to the Board for a premises licence.

Exempt Premises

Scottish Ministers may designate ports, hoverports and airports as exempt. No ports or hoverports are presently designated.

The following airports are exempt:-

- Aberdeen Airport
- Edinburgh Airport
- Glasgow Airport
- Glasgow Prestwick Airport
- Inverness Airport; and
- Sunburgh Airport

An Aircraft, hovercraft or railway vehicle is exempt while on a journey

A vessel engaged on an international journey or a journey forming part of a ferry service is exempt.

Premises which are occupied for the purposes of the armed forces are exempt unless they are being used for other purposes.

Who Can Apply for A Premises Licence?

Any person aged 18 and over can apply for a premises licence as can a partnership, a company, a member's club, students' union or other body.

A member's club/students' union must meet the following requirements in order to be able to apply for a premises licence –

- It must not be conducted for the purposes of making a profit; and
- It must have a written constitution and rules which include the following provisions –
 - The business of the club is to be under the management of a committee or other governing body elected by the members of the club
 - No person under 18 is to be admitted as a member of the club (unless the club is devoted primarily to some sporting purpose or is a students' union)
 - No member of the committee or other governing body and no person employed by the club is to have any personal interest in the sale of alcohol on the club premises or in the profits arising from such sale;
 - Other than when an occasional licence has effect, no person is to be supplied with alcohol on the club premises unless that person is –
 - A member of the club;
 - A person who is on the premises at the invitation of a member of the club and is accompanied by that member; or
 - A member of another club which is also a club complying with these requirements
 - Where a person, as outlined above, is supplied with alcohol on club premises when an occasional licence is not in effect, there is to be entered in a book kept for the purpose –
 - The date in question
 - The name and address of the person; and
 - The name of the member accompanying that person
 - Current accounts and books are to be kept showing the financial affairs and intromissions of the club
 - The club has to have at least 25 members to be properly constituted; and
 - No person is to be allowed honorary or temporary membership of the club or to be relieved of the payment of the regular entrance fee or subscription –
 - Except to allow temporary participation in the activity which is the prime purpose of the club
 - Except in accordance with specific provision set out in the club rules

Who Do I Apply to?

An application for a premises licence must be made to the appropriate licensing board. The appropriate licensing board is –

- The licensing board in whose area the premises are situated, or
- Where the premises are situated in the area of more than one Licensing Board, the Board in whose area the greater or greatest part of the premises is situated, or
- Where it cannot be determined where the greater or greatest part of the premises is situated, to a Licensing Board nominated by the applicant to be the Licensing Board for the purposes of the premises licence application.

What Information is required in an application?

The application must contain a description of the subject premises.

The application will also ask for details relating to the applicant.

Where the applicant is a company, partnership, club, or other body, details must also be given relating to “connected persons”. Connected person is defined as being –

- In the case of partnership, a partner
- In the case of a company, a person who is –
 - A director; or
 - A person who has control of the company
- In the case of a club, an office bearer of the club
- In any other case, a person who is concerned in the management or control of the body.

A person is taken to have control of a company if

- Any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person’s directions or instructions; or
- The person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.

What Has to be Lodged with an application?

The application form must be accompanied by the following documents:-

- An operating plan
- A Licensing Objectives risk assessment
- Layout Plans
- Section 50 Certificates
- Disabled Access and Facilities Statement
- The personal licence for the proposed designated premises manager
- The application fee

It is very important to familiarise yourself with the Board's policy before making your application.

What is an operating plan

An operating plan sets out details of –

- The core hours for on sale of alcohol
- The core hours for off sale of alcohol
- Any seasonal variations in the operation of the premises
- The principal activities relating to the sale of alcohol that take place on the premises
- Other activities that take place on the premises
- Whether the premises will operate late night opening hours
- Whether children and/or young persons are permitted on the premises (on sales only)
- The capacity of the premises
- Details of the designated premises manager for the premises (this does not apply where the applicant is a members' club)

This document will be attached to the premises licence once granted by the Board

What is a premises manager?

Every premises licence must have a person named in the operating plan who is in charge of the day-to-day running of the premises. This person is known as the "Designated Premises Manager" on the premises licence.

The Designated Premises Manager must be the holder of a personal licence and you may be required to produce evidence of that to the Board. Please see the Board's Guidance on Personal Licences for further information.

Alcohol can only be sold in licensed premises where there is a designated premises manager and every sale of alcohol made on the premises must be authorised by the premises manager (either generally or specifically) or by another person holding a personal licence.

Members' clubs do not require to have a designated premises manager named on their premises licence, nor does the sale of alcohol have to be authorised.

What information is required on the layout plan

The Premises Licence (Scotland) Regulations 2007 set out what information requires to be shown on the layout plans accompanying the application.¹

¹ Note: The Premises Licence (Scotland) Regulations 2007 stipulate that 1 layout plan is required with an application. However, paragraph 5 of the Licensing (Procedure) (Scotland) Regulations 2007

The Regulations stipulate that

- A layout plan is to be drawn to the scale of 1:100 or such other scale as is agreed between the person submitting the plan and the Licensing Board to which it is to be submitted. And

In the case of all premises, the plans must show –

- The extent and dimensions of the boundary of the building, if relevant, and any external and internal walls of the building, and, if different, the perimeter and dimensions of the premises to be licensed (including outside drinking areas);
- The location and names of any streets surrounding the premises from which members of the public have access to the premises;
- The location and width of each point of access to and egress from the premises;
- The location of any equipment used for the detection or warning of fire or smoke or for fighting fires;
- The location of any steps, stairs, elevators or lifts on the premises;
- The location of any toilets on the premises (identified as male, female or disabled, as appropriate)
- Any area on the premise set aside specifically for the use of children and young persons; and
- Any area on the premises to which children and young persons will have access.

For any premises providing sale of alcohol on the premises, the plans must also show –

- The use or uses to which each part of the premises will be put (under reference to the activities identified in the operating plan)

For any premises providing sale of alcohol off the premises, the plans must also show –

- The location of the area or areas² to be used for the display of alcohol;
- The maximum width and height (in metres) of the frontage to be used for the display of alcohol within that area or those areas; and
- The maximum linear measurement (in metres) of any displays of alcohol outside the frontage referred above.

What are Section 50 certificates

requires that an application must be accompanied by 6 additional copies of the layout plan required under Section 20(2)(b)(ii) of the Licensing (Scotland) Act 2005, or such lesser number of copies as the Board may determine. That means that a maximum total of 7 plans may require to be lodged with an application. Applicants should check with the appropriate licensing board to see how many plans need to be lodged with their particular application.

A **premises licence application** must be accompanied by –

- A S50 planning certificate
- A S50 Building Standards Certificate; and

² Paragraph 13 of the mandatory conditions attaching to premises licences provides that alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following:

- A single area of the premises agreed between the Licensing Board and the holder of the licence; or
- A single area of the premises which is inaccessible to the public.

In an area agreed between the Licensing Board and the holder of the licence, a product other than alcohol may only be displayed if it is a non-alcoholic product or packaged with, and may be purchased only along with, alcohol.

- A S50 food hygiene certificate

A **provisional premises licence** must be accompanied by –

- A S50 provisional planning certificate

You must apply to the relevant local authority for these certificates, not the Licensing Board. You must also have been issued with these certificates before you apply for your premises licence as the certificates must be lodged with the premises licence application.

Application forms for S50 Certificates can be found at www.aberdeenshire.gov.uk

A premises licence application must be accompanied by a **Disabled Access and Facilities Statement**. It needs to set out details of:

- Disabled access and facilities
- Disabled access to, from and within the premises
- Facilities available
- Other provisions

Guidance for completing a Disabled Access and Facilities Statement can be found here. <http://www.gov.scot/Publications/2018/03/2767>

What will it cost

The application fee will depend upon what the rateable value for the premises is. You can find out what the rateable value of your premises is by logging onto –

www.saa.gov.uk

By entering the postcode for the premises, the website should be able to take you to a page showing the details of the rateable value for your premises.

Alternatively, please contact your local assessor's office and they should be able to advise you what the rateable value of your premises is.

You should then check what the Board's fee is. The Board's fees can be found at www.aberdeenshire.gov.uk A copy of the Board's fees are attached to this Guidance Note for ease of reference.

The application fee is due on the date on which the application is received by the Board.

What Happens once I Lodge My Application?

Your application, together with the operating plan, licensing objectives risk assessment and layout plans and other documents requiring to be lodged with the application will be checked by Licensing Officers to ensure that all relevant information has been completed and is relevant and correct.

If anything is not correct you will be given an opportunity to correct the relevant documents.

Once the application is complete, is relevant and correct, the Board will deem the application to be competent and capable of being processed.

The Board will then give notice of the application to –

- Each person having a notifiable interest in neighbouring land;
- Any community council within whose area the premises are situated
- The council within whose area the premises are situated (unless the applicant is the council) – this will normally be Planning Services, Building Standards, Environmental Health and the Licensing Standards Officer;
- The appropriate chief constable; and
- The relevant Fire authority
- Public Health

Each notice must be accompanied by a copy of the application.

At the same time, the application form will be published on the Board's website.

The applicant will be provided with a site notice to display at the premises. The date of display of the site notice will co-incide with the date of notice of the application and the date of publication of the application on the Board's website.

The Chief Constable then has 21 days in which to lodge a notice with the Board detailing the following -

- Either –
 - a notice stating that the applicant or any connected person has been convicted of a relevant or foreign offence; or
 - A notice stating that the applicant or any connected person has not been convicted of a relevant or foreign offence.

The Chief Constable may include in his notice a recommendation that, having regard to any convictions specified in the notice, it is necessary for the purpose of any of the licensing objectives that the application be refused.

Any person can lodge an objection or representation in respect of the application within 21 days of notice of the application being issued or the application being published on the Board's website.

Objections must relate to one of the grounds of refusal of a premises licence.

Representations can be lodged – □

In support of the application

- As to modifications which the person making the representations considers should be made to the operating plan accompanying the application, or
- As to conditions which the person making the representation considers should be imposed.

The Chief Constable can object to a premises licence only on the ground that -

- The chief constable considers that the applicant or a connected person is involved in serious crime; and
- By reason of that involvement, the chief constable considers that it is necessary for the purposes of any of the licensing objectives that the application be refused.

Where the Board receives notice of an objection or representation relating to a premises licence application, the Board must give notice of the objection or representation to the applicant and must also have regard to the objection or representation in determining the application. The Board may, however, reject an objection or representation if it considers it to be frivolous or vexatious and may reject a late objection or representation if the person lodging it cannot demonstrate to the Board that there was good reason why it was not lodged on time.

The Board may then allow the applicant a period of time to adjust the premises licence application in light of any representations made. In relation to objections, the Board may also instruct the Licensing Standards Officer to see if matters contained in the objection can be resolved by way of mediation.

Thereafter, the application will be allocated to a meeting of the Licensing Board for consideration. Applicants will normally be asked to be present or represented at the meeting to speak to their application before the Board.

The Board usually inspects the premises prior to the date of the Board Meeting.

If the application is granted, all relevant parties will receive written notice of the decision within 7 days of the date of the Board Meeting and the premises licence and a summary of the premises licence will then be issued by the Board.

If a provisional premises licence has been granted, the licence issued will expire after a period of five years, unless it has been confirmed by the Board during that time period.

If the application is refused, all relevant parties will receive written notice of the decision. The notice must specify the ground of refusal including any licensing objectives in question. It will then be for the applicant to take independent legal advice as to whether or not to appeal the Board's decision. If the applicant chooses not to appeal, the Board will not be in a position to accept a further premises licence application made before the expiry of one year beginning with the date of refusal, unless the Board directs otherwise or there has been a material change in circumstances since the date of refusal of the previous application.

What Are the Grounds of Refusal of a Premises Licence?

The grounds of refusal for a premises licence/provisional premises licences are –

- That the subject premises are excluded premises
- That the application must be refused under certain sections of the 2005 Act due to earlier refusals of applications
- That the Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives
- 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 the sale of alcohol
- That, having regard to the number and capacity of –
 - Licensed premises, or
 - 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.

In considering refusal under the licensing objectives, the Board, in respect of any of the licensing objectives, must take into account any conviction given by the Chief Constable and any recommendation made by the Chief Constable.

Where a Board considers refusal, but the application, if modified, would be capable of being granted, the Board, where the applicant accepts the modification, must grant the application.

How long will an application take to process

The Licensing (Procedure) (Scotland) Regulations 2007 specifies that a Licensing Board must, within 42 days of receipt of a premises licence or provisional premises licence application advertise the application on the Board's website and give notice of the application to all relevant parties.

The same Regulations provide that the Board must hold a hearing to determine the application no later than 119 days after the application has been advertised and consulted on.

The Board has 28 days in which to issue a licence they have granted

That means that a licensing board has a total of 161 days in which to process and determine a premises licence/provisional premises licence and 28 days in which to issue the licence. In other words, the Board can take just approximately 6 months to process and determine a premises licence/provisional premises licence application.

In practice, it takes approximately 3 months to process and issue a licence.

When will I get my licence

Your licence must be issued to you within 28 days of the application being granted by the Board.

You will also receive a summary premises licence sheet to be displayed within the premises

You should note that it is a legal requirement in terms of Section 52(1) of the 2005 Act that the premises licence holder must secure the premises licence, or a certified copy of it, is kept at the premises in respect of which it is issued in the custody or under the control of –

- (a) the Licence Holder, or
- (b) the premises manager

In terms of Section 53(2) the premises licence holder must secure that the summary of the licence, or a certified copy of the summary, is prominently displayed on the premises so as to be capable of being read by anyone frequenting the premises.

Any premises licence holder who, without reasonable excuse, fails to comply with these requirements, commits an offence.

What are the mandatory conditions?

The mandatory conditions are conditions set out within Schedule 3 of the Licensing (Scotland) Act 2005 and attach to all premises licences. A copy of the mandatory conditions can be found at www.aberdeenshire.gov.uk .

What are the local conditions?

The Board also has a pool of local conditions. These conditions are attached to the licence on a case-by-case basis depending on the nature of the premises for which the licence is sought. A copy of the pool conditions can be found at www.aberdeenshire.gov.uk

What do I need to do once I get my licence

Check the licence Thoroughly

Once you have received your licence you must check it through very carefully to make sure it is correct. If there are any errors you should return it to the Board for correction.

Pay the Annual Fee

Your premises licence does not renew after a fixed period. It remains in force provided you pay an annual fee for the licence. The first annual fee falls to be paid no later than 30 days after the date on which the licence takes effect (in the case of a provisional premises licence this will be no later than 30 days after it takes effect following confirmation by the Board)

As with the first application fee, the annual fee is based on the rateable value of your premises. You can find the Board's fees at www.aberdeenshire.gov.uk

Thereafter, the annual fee is due to be paid on 1st October each year, or, where 1st October falls on a Saturday or Sunday, on the immediately following Monday.

Ensure the Licence is Kept on the Premises

As outlined above, you need to ensure you keep the premises licence, or a certified copy thereof, on the premises in the custody of the licence holder or the designated premises manager.

Ensure the Summary Licence is on Display

As outlined above, you need to ensure that the summary premises licence, or a certified copy thereof, is displayed in a prominent position on the premises.

Ensure that your staff know what is in the Premises Licence

All staff working in the premises should know what the premises licence is and what information is contained within the operating plan, the layout plan and the mandatory/local conditions attached to the licence to ensure that the premises is operated in accordance with the terms of the licence.

Ensure that the correct notices are displayed within the premises

The Licensing (Scotland) Act 2005 provides for the display of certain notices within the premises. The Board will issue a notice in relation to children in the premises with your licence.

Application Checklist

| | |
|--|--|
| Completed Application Form | |
| Completed Operating Plan | |
| Personal Licence for the proposed Designated Premises Manager | |
| Licensing Objectives Risk Assessment | |
| 7 layout plans of the premises | |
| Constitution (Members' Clubs only) | |
| S50 Certificate from planning services (premises and provisional premises) | |
| S50 Certificate from Building Standards (premises only) | |
| S50 Certificate from Environmental Health (premises only) | |
| Application Fee | |

Have I completed all relevant documents

Am I lodging the application in time to allow the application to be processed, granted and issued before the premises is due to open?