

ABERDEENSHIRE LICENSING BOARD

North Division

Licensing (Scotland) Act 2005

Guidance on Applying for the Transfer of a Premises Licence

This guidance note offers guidance on how to apply for the transfer of a premises licence.

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

Where the applicant intends to vary the licence in conjunction with the transfer application you should also read the Board's Guidance on applications for Variation of 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.

In what circumstances would I need to transfer a Premises Licence?

As with any other type of business, licensed premises can be bought and sold. Any person purchasing licensed premises needs to change the details on the premises licence from the former licence holder into his/her their name in order to continue operating the business lawfully.

Transfers are also required in certain specific circumstances – see information under “**Who Can Apply**” below for further information.

Who Can Apply for the Transfer of a Premises Licence?

The Act provides for 2 types of transfer.

Section 33 of the Act allows the current premises licence holder to apply for the transfer of the licence to another person. In this case the transfer of the premises licence cannot be made to any individual under the age of 18.

Section 34 of the Act allows a person, other than the current premises licence holder, or a person under the age of 18, to apply for the transfer of the licence. This can happen only in certain defined circumstances. Those circumstances are:-

- ◆ The premises licence holder, being an individual –
 - Dies, or
 - Becomes incapable within the meaning of Section 1(6) of the Adults With Incapacity (Scotland) Act 2001 (asp 4);
- ◆ The premises licence holder, being an individual, a partnership or a company, becomes insolvent;
- ◆ The premises licence holder, being a person other than an individual, a partnership or a company, is dissolved; and
- ◆ The business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

The Act stipulates that an individual or partnership becomes insolvent on –

- ◆ The approval of a voluntary arrangement proposed by the individual or partnership;
- ◆ Being adjudged bankrupt
- ◆ The individual's or partnership's estate being sequestrated
- ◆ Entering into a deed of arrangement made for the benefit of creditors, or
- ◆ Granting a trust deed for creditors.

The Act stipulates that a company becomes insolvent on

- ◆ The approval of a voluntary arrangement proposed by its creditors
- ◆ The appointment of an administrator or administrative receiver in respect of it, or
- ◆ Going into liquidation

Any such insolvency has the same meanings as used in the Bankruptcy (Scotland) Act 1985 (c66) or the Insolvency Act 1986 (c 45)

A “person” to which the licence transfers (the “transferee”) can be an individual, 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 the transfer of 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?

Application for the transfer of a licence must be made to the Board that granted and issued the premises licence.

What Information is required in an application?

The application must contain –

- ◆ An indication of whether application for transfer is being made by the current premises licence holder or by someone other than the current premises licence holder
- ◆ An indication of whether application is also being made for a minor or major variation of the premises licence [see separate guidance notes on applying for variation of a premises licence]
- ◆ An indication as to whether the transfer application is dependent upon any variation application made being granted [see separate guidance notes on applying for variation of a premises licence]
- ◆ the name, address and premises licence number subject premises
- ◆ the name, address, contact details of the current premises licence holder (not the designated premises manager but the holder of the licence)
- ◆ details relating to the transferee
- ◆ details of whether the transferee has ever been refused a premises licence
- ◆ details of whether the transferee or any connected person has any relevant or foreign offences

Note: Where the transferee 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:-

- ◆ The premises licence for the subject premises. [the licence consists of a coversheet, mandatory conditions, local conditions, docquetted operating plan, docquetted risk assessment, docquetted layout plan. Licences for Members’ clubs will also included a docquetted constitution. All of this must be submitted to the Board]
- ◆ Where the premises licence cannot be produced, a written explanation for this
- ◆ Where the transferee is a members’ club, a copy of the club constitution and rules
- ◆ Where application is made by someone other than the current licence holder, documentation that provides evidence that they have the right to apply for the transfer of the licence (concluded missives, signed lease for example)
- ◆ Where application is being made by someone other than the current licence holder, the written consent of the current Licence Holder to the transfer
- ◆ Where application is also being made for a variation of the premises licence, the ancillary documentation that requires to be lodged with such a variation [see separate guidance note on applying for variation of a premises licence]
- ◆ The application fee

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.

Because the actual licence requires to be submitted with the transfer application, you should ensure that a certified copy of the licence is retained within the premises while the original is with the Board.

What will it cost

Application fees for transfer of premises licence are set by Licensing Boards at local level.

The fee is listed at the back of the application form.

What Happens once I Lodge My Application?

Your application will be checked by Licensing Officers to ensure that all required information has been completed and is relevant and correct.

If anything is not correct then you will be given an opportunity to correct what is wrong.

Once the application is complete, is relevant and correct, the application will be deemed to be competent and capable of processing.

The Board must then give notice, together with a copy of the application to the Chief Constable.

The Chief Constable must, within 21 days of receipt of notice of the application from the Board, respond to the notice by giving the Board either –

- ◆ A notice stating that neither the transferee, nor any connected person, has been convicted of a relevant or foreign offence; or
- ◆ A notice specifying any convictions of the transferee or of any connected person for a relevant or foreign offence. If the Chief Constable considers that, having regard to any convictions specified in the notice, it is necessary for the purposes of any of the licensing objectives that the application for transfer of the licence to the transferee be refused, he can include a recommendation to that effect in the notice.

Any person can lodge an objection or representation in respect of the application.

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

Where the Chief Constable has provided a notice indicating that the transferee, or any connected person, has no relevant or foreign offence and no other objections or representations have been made in respect of the application, the Board must grant the application.

Where the Chief Constable has provided a notice indicating that the transferee, or any connected person, has relevant or foreign offences, or where other objections or representations have been lodged in respect of the application, the Board must hold a hearing to consider and determine the application. The Board must hold the hearing within 42 days of the date of receiving notice from the Chief Constable or from receipt of the objection or representation.

After considering the application at a hearing, the Board will either determine that the application for transfer be granted, or that it be refused.

Where you are applying for a variation of the premises licence at the same time as applying for the transfer of the licence, and you have indicated that the transfer of the licence is reliant on the variation application being granted, the Board must first consider the variation application before considering the transfer application. This might mean a longer processing time than it would take if you applied for the transfer of the licence without a variation application.

What Are the Grounds of Refusal of the Transfer of a Premises Licence?

Where an application is considered at a hearing of the Licensing Board, the Board must, having regard to the Chief Constable's notice –

- ◆ If satisfied that it is necessary to do so for the purposes of the crime prevention objection REFUSE the application; or
- ◆ If not so satisfied, GRANT the application

How long will an application take to process

A transfer application without an accompanying variation application will normally take between 3- 4 weeks to process, grant and issue, where there are no relevant or foreign offences and no other objections.

A transfer application with an accompanying minor variation application will also normally take between 3-4 weeks to process, grant and issue, where there are no relevant foreign offences and no other objections

In relation to a transfer application without an accompanying variation application, where there is a notice from the Chief Constable outlining relevant or foreign offences or there are other objections or representations, the Board has 42 days (approximately 6 weeks) from the date of receipt of the notice or objection/representation to hold a hearing. This means that the processing time is likely to be 6-8 weeks.

In relation to a transfer application with an accompanying minor variation application, where there is a notice from the Chief Constable outlining relevant or foreign offences or there are other objections or representations, the Board has 42 days (approximately 6 weeks) from the date of receipt of the notice or objection/representation to hold a hearing. This means that the processing time is likely to be 6-8 weeks.

A transfer application with an accompanying major variation, which is reliant on the grant of that variation, is likely to take approximately 3 months to process, whether there is a notice from the Chief Constable and/ or an objection or representation lodged or not. This is because the variation application must be considered by the Board before the Transfer application and the processing time for a major variation of premises licence is approximately 3 months.

Where possible, you should seek to transfer a premises licence with a minor variation only, if the transfer is urgent. Once the licence has transferred to the transferee an application for major variation can then be lodged.

When will the Transferee get my licence

The licence must be issued to the applicant within 28 days of the application being granted by the Board. In reality, the amended licence will be issued at the end of the processing timescales outlined above

Your premises licence will consist of –

- ◆ An amended premises licence coversheet
- ◆ The mandatory conditions
- ◆ The Board's local conditions
- ◆ A docquetted operating plan
- ◆ A docquetted licensing objectives risk assessment
- ◆ A docquetted constitution (Members' clubs only)
- ◆ A docquetted layout plan

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

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 and the Board has no discretion in applying these conditions to licences.

What are the local conditions?

The Board also has a pool of local conditions. These will be attached to the licence on a case-by-case basis depending on the type of premises licensed.

What Does the Transferee Need to do once The Licence is Issued?

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.

Note 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 Annual Fee falls to be paid on 1st October each year, or, where 1st October falls on a Saturday or Sunday, on the immediately following Monday. The annual fee is based on the rateable value of the property. You can find the Board's fees at www.aberdeenshire.gov.uk

Ensure the Licence is Kept on 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

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

Ensure the Summary Licence is on Display

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.

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. Some Boards issue the notices with the licences but it is the responsibility of the premises licence holder to ensure these notices are displayed.

More information on the notices that require to be displayed can be found at www.aberdeenshire.gov.uk.

Is there any other information available

- ◆ The Licensing (Scotland) Act 2005 and its related Regulations
- ◆ The Scottish Government issues Guidance to all Licensing Authorities on the Licensing (Scotland) Act 2005.
- ◆ The Board's Policy Statement

If you are still uncertain as to how to proceed with an application you should seek independent legal advice.

Where can I get application forms

A copy of the application form is attached to this Guidance Note for information purposes.

Downloadable copies of the application form can be obtained from the Board's website.

E-mail licensing@aberdeenshire.gov.uk

Application Checklist

Completed Application Form	
Premises Licence	
Letter Explaining why Premises Licence cannot be produced	
Club Constitution and Rules (where applicant is a members' club)	
Evidence of entitlement to make the application (where applicant is someone other than the current licence holder)	
ancillary documentation relating to any variation sought (where appropriate)	
Application Fee	

Have I completed all sections of the application form?

Am I lodging the application far in enough in advance that it can be processed and issued in time?