



## **SCOTTISH BORDERS LICENSING BOARD**

### **LICENSING (SCOTLAND) ACT 2005 GUIDANCE FOR APPLICANTS PREMISES LICENCE AND OPERATING PLANS**

#### **GENERAL**

The application form may be scanned for computer purposes and should be completed in typescript or in block capitals using BLACK ink. All writing should be contained within the boxes where they are provided. Where YES/NO answers are required, the non-applicable answer should be crossed out in BLACK ink.

The extent to which questions should be answered will be proportionate to the complexity or otherwise of the use to which the premises are to be subjected. For example, comparatively fewer details may be required for an applicant who intends to sell alcohol for off consumption in a village store as opposed to other premises which may have any different uses.

Section 50 Certificates are required to be submitted – Planning Certificate; Building Standards Certificate and Food Hygiene Certificate if food is to be supplied on the premises. Where an application is for a Provisional Premises Licences, a Provisional Planning Certificate should be supplied.

#### **QUESTIONS 1 & 2**

Particulars of applicant – The full name and address including postcode of the premises to be licensed should be provided. In instances where an applicant has not decided on a name for premises at the time of application, this should be indicated.

Information supplied in response to question 2 may be used by the Chief Constable to identify whether or not the applicant (or any connected person\* in a case where the applicant is not an individual eg it is a company or partnership) has been convicted of a relevant offence.

\*'Connected person' is defined in section 147(3) of the Act.

#### **QUESTION 3**

Previous applications – Section 25(1), (2) and (3) of the Licensing (Scotland) Act 2005 makes certain provisions regarding refusals of earlier applications for Premises Licences under the Act. Where applicants or connected persons have had an earlier application or applications refused under the terms of the Act, details should be provided including the date(s) of earlier refusal(s), the premises to which refusal(s) applied, and the name of the Licensing Board which refused the application(s).

#### **QUESTION 4**

Previous convictions – Where the applicant (or connected persons) has been convicted of a relevant or foreign offence, details should be provided including the date of conviction, place of conviction, nature of offence and penalty. 'Relevant offences' are prescribed in The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513). For the purposes of the Act, a conviction for a relevant offence or foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 and details of such a conviction need not be provided. A 'foreign offence' is defined in Section 129 (2) of the Act.

A conviction for a relevant or foreign offence does not prevent a person from applying for or being granted a licence, but it is a matter to which the Board will have regard when determining a person's suitability to hold a licence.

#### QUESTION 5

Description of premises – Applications should provide the Board with a clear indication of the type of operation that will be undertaken on the licensed premises (eg whether the premises will be run as a pub, off-sale, nightclub, mixed use premises, hotel or restaurant etc) having regard to the activities listed in the Operating Plan and matters shown in the Layout Plan. It will also be helpful if applications contain a description of the overall setting in which the premises are located and this should include the general area for example rural, urban or town centre location; whether detached, terraced, part of a shopping mall etc; building solely occupied or shared.

#### QUESTION 6

This question required to be completed so the Board can identify those registered clubs that wish to benefit from the exemptions from the Licensing (Scotland) Act 2005 provided for in Section 125 of that Act. In order to qualify for these exemptions a club must meet the criteria set down in The Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007/76).

DECLARATION by applicant or agent on behalf of the applicant

The application form requires to be signed by the applicant for the premises licence or the applicant's agent. An agent must confirm that the form is being signed in that capacity.

### **OPERATING PLAN**

The Operating Plan must accompany an application for a premises licence under Section 20 of the Licensing (Scotland) Act 2005.

Compliance with the Operating Plan is a Condition of the Premises Licence (Licensing (Scotland) Act 2005, Section 27(1) and Schedule 3, Paragraphs 2(1) and 3).

#### QUESTION 1

This question seeks to establish whether alcohol will be sold for consumption on the premises, off the premises, or both. This information is needed because the Act allows for different licensing hours for on-sales and off-sales where both are offered.

#### QUESTION 2

This question requires a statement of CORE times when alcohol is being sold for consumption ON the premises. The table should be completed to show, for each day, the time the premises will OPEN for the purposes of selling alcohol and the time when the premises will CLOSE for the purposes of selling alcohol (the terminal hour).

#### QUESTION 3

This question requires a statement of CORE times when alcohol is being sold for consumption OFF the premises. The table should be completed to show, for each day, the time the premises will OPEN for the purposes of selling alcohol and the time when the premises will CLOSE for the purposes of selling alcohol (the terminal hour).

Applicants should note that alcohol cannot be sold for consumption off the premises earlier than 10.00am or later than 10.00pm (Licensing (Scotland) Act 2005, Section 65(3)).

#### QUESTION 4

This question seeks to establish if the applicant intends to operate the premises continuously throughout the year or on a seasonal basis. Where the applicant intends to operate on a seasonal basis, details of when the premises will be open for business should be provided. This seeks to identify any occasions when occasional extensions to licensed hours may be required.

#### QUESTION 5

This question deals with other activities or services which may be provided in addition to the sale of alcohol during core hours and outwith those core hours. Applicants should indicate what activities or services they intend to provide by confirming YES or NO in each of the categories given.

When completing this section applicants should have regard to the contents of the Licensing (Scotland) Act 2005, Section 23(5)(d) which establishes the grounds for refusal for a Premises Licence with regard to the nature of activities proposed to be carried on in the subject premises. Whilst Section 20(4)(d) of the Act requires that the Plan contains 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, the Operating Plan need not show the exact start and finish times of all activities listed in the Plan.

The Plan allows for a general statement to be made that the activities listed will take place during and/or outwith licensed hours.

In the case of off-sales premises or missed used premises which make sales of products other than alcohol, for example, newspapers, groceries etc, there is no requirement for these activities to be included within the Operating Plan since any licence issued under the Act relates to licensing of alcohol.

#### QUESTION 6

Children and Young Persons – For the purposes of this Act a ‘child’ means a person under the age of 16 years and a ‘young person’ means a person aged 16 or 17 years.

#### QUESTION 7

Capacity of Premises – Applicants are asked to confirm the proposed capacity of the premises they wish to be licensed. Any figure provided may be verified for the purposes of overprovision by or on behalf of the Licensing Board.

The recommendation of the National Licensing Forum which was agreed by Ministers is that, for the purposes of the overprovision assessment, determination of capacity of licensed premises should be undertaken by Local Authority Building Standards Officers. It must be stressed that any capacity figure that is determined will only be used for the purposes of overprovision under the Licensing (Scotland) Act 2005 and for no other purposes. The definition of capacity for on-sales and off-sales is set out in Section 147 of the Act.

The Board will be required to refused applications for Premises Licences on the grounds of overprovision under Section 23(5)(e) from the commencement of the transition period on 1 February 2008 where they have determined there is overprovision in any locality or localities within the Board area.

Following commencement of Section 7(1) of the Act on 1 September 2009, the Board will be under a duty to provide in their revised Policy Statement, a statement as to the extent to which the Board consider there to be overprovision of Licensed Premises; or Licensed Premises of a particular description in any locality within the Board’s area.

## QUESTION 8

Premises Manager – Where the application is for the grant of a Provisional Premises Licence there is no requirement to complete this question (see Licensing (Scotland) Act 2005, Section 45(10)(b)).

An individual may not be the premises manager of more than one licensed premises at the same time. Accordingly if an individual who is the premises manager of licensed premises is subsequently specified in the premises licence of another licensed premises as the manager of those other premises, the subsequent specification is of no effect (Licensing (Scotland) Act 2005 Section 19(2)).

### LAYOUT PLAN

- (1) A layout plan is to be drawn:
  - (a) in a scale where 1 millimetre represents 100 millimetres; or
  - (b) in such other scale as may be agreed between the person submitting the plan and the Licensing Board.
  
- (2) A layout plan:
  - (a) is to show the matters specified in paragraph (3);
  - (b) is to show the matters specified in paragraph (4) in the case of premises to be licensed for the sale of alcohol for consumption on the premises;
  - (c) is to show the matters specified in paragraph (5) in the case of premises to be licensed for the sale of alcohol for consumption off the premises; and
  - (d) may include a legend through which the matters mentioned or referred to in those paragraphs are sufficiently illustrated by the use of symbols on the plan.
  
- (3) The matters specified in this paragraph are:
  - (a) 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);
  - (b) the location and names of any streets surrounding the premises from which members of the public have access to the premises;
  - (c) the location and width of each point of access to and egress from the premises;
  - (d) the location and width of any other escape routes from the premises;
  - (e) the location of any equipment used for the detection or warning of fire or smoke or for fighting fires;
  - (f) the location of any steps, stairs, elevators or lifts on the premises;
  - (g) the location of any toilets on the premises (identified as male, female or disabled as appropriate);
  - (h) any area on the premises set aside specifically for the use of children and young persons; and
  - (i) any area on the premises to which children and young persons will have access.
  
- (4) The matters specified in this paragraph are the use or uses to which each part of the premises will be put (under reference to the activities identified in the operating plan).
  
- (5) The matters specified in this paragraph are:
  - (a) the location of the area or areas to be used for the display of alcohol;
  - (b) 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
  - (c) the maximum linear measurement (in metres) of any displays of alcohol outside the frontage referred to in head (b).

