

ABERDEENSHIRE LICENSING BOARDS

Licensing (Scotland) Act 2005

Guidance on Applying for Variation of a Premises Licence

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

Applicants should also familiarise themselves fully with the Board's Licensing Policy Statement before making an application. This can be found at www.aberdeenshire.gov.uk

If you are making a variation at the same time as applying for the transfer of a licence, you should also read the Board's Guidance on applying for Transfer of Premises Licence before completing the transfer application form. This can be found at www.aberdeenshire.gov.uk

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 vary a Premises Licence?

As with any other type of business, licensed premises make changes from time to time in how they operate the business.

For example, changes can be made to the layout of the premises, including where alcohol is displayed or stored, adding bedrooms or an outside drinking area, moving bar counters within a room, removing parts of the premises from licensed use, allowing younger children access to parts of the premises.

Staff change regularly in licensed premises and designated premises managers can change, particularly where the licence holder has a chain of licensed premises where managers regularly are moved around premises, or where premises change hands and new staff are brought in to help run the business.

Premises Managers can also retire, be off on maternity leave, extended annual leave, sickness leave, die or become incapacitated, requiring a change of designated manager for the premises.

The 2005 Act allows some types of variation to be classed as minor. Anything not classed as minor is classed as a "major" variation for the purpose of this guidance.

The Act also allows for variation of the premises licence at the same time as an application for the transfer of a licence, inclusive of substituting a new premises manager onto the licence. Please see the separate guidance note on applying for a transfer of a premises licence for further information.

What is a Minor Variation?

A variation is classed as **minor** where the variation:

- Alters the layout plan but does not result in inconsistency with the operating plan
- Restricts the terms of entry for children and young persons
- Changes the details of the premises manager.
- Changes the name of the premises as disclosed in the premises licence
- Reduces the licensed hours in a way which does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan, whether such reduction is temporary or permanent.
- In relation to access of children or young persons onto the premises, any variation so as to
 - Increase the minimum age at which children or young persons may be allowed onto the premises;
 - Reduces the times at which children or young persons may be allowed onto the premises
 - Restricts the access of children or young persons to certain parts of the premises
- Reduces the capacity of the premises whether resulting from a variation to the layout plan or otherwise
- Results in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels
- Provides that, when the premises are fully occupied, more customers are likely to be seated than standing.

Where an alteration is made to the layout plan, a check will be made with Building Standards to ensure that the capacity figure given in the operating plan has not been altered by the proposed new layout.

The Licensing Board must grant an application for a minor variation of the premises licence.

What is a Major Variation?

All types of variation that are not minor variations are classed as a **major** variation. A major variation means any variation (including an addition, deletion or other modification) of:

- The conditions to which the licence is subject
- The information contained in the operating plan
- The layout plan

- Any other information contained or referred to in the licence

Who Can Apply for a Variation of a Premises Licence?

Applications for variation of a premises licence must be lodged by the holder of the premises licence¹ or an agent on behalf of the holder of a premises licence.

Who Do I Apply to?

Application for variation of a premises licence must be made to the Licensing Board which issued the premises licence.

What Information is required in an application?

The application should contain –

- ◆ An indication of whether application is being made for a minor variation or a major variation of the premises licence;
- ◆ An indication of whether application is also being made for a transfer variation of the premises licence [see separate guidance notes on applying transfer 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 transfer 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 type of minor variation
- ◆ details relating to the type of major variation

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. [licence coversheet, mandatory conditions, local conditions, original operating plan, original licensing objectives risk assessment, original layout plan, original constitution (Members' Clubs only)]
- ◆ Where the premises licence cannot be produced, a written explanation as to why
- ◆ Where the proposed variation alters the layout plan currently attached to the licence, 7 sets of layout plans showing the proposed layout for the premises;
- ◆ Where the proposed variation alters the terms of the operating plan currently attached to the premises licence, an amended operating plan reflecting the proposed changes
- ◆ Where application is also being made for a transfer of the premises licence, an application for transfer of licence and the ancillary documentation that

¹ The Designated Premises Manager is not the holder of the licence

requires to be lodged with such a licence [see separate guidance note on applying for transfer 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 variation application, you should ensure that a certified copy of the licence is retained within the premises while the original is with the Licensing Board.

What will it cost

The Licensing (Fees) (Scotland) Regulations 2007 stipulate that the fee for a minor variation to substitute a new premises manager onto the licence is £31.00.

The 2007 Regulations also stipulate that the fee for any other type of minor variation application is £20.00.

The 2007 Regulations allow Licensing Boards to set the application fees for major variation applications lodged within their Board area. The Board's fee is listed at the back of the application form. The fees can also be found at www.aberdeenshire.gov.uk

Please refer to the Guidance Note on applying for the Transfer of a Premises Licence for information on fees relating transfers.

What Happens once I Lodge My Application?

All Applications

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 the application.

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

Minor Variations

Where the application relates to an alteration to the layout plan of the premises, once the application is complete, the Board will check with Building Standards to ensure that the capacity of the premises is not affected.

The Board MUST grant applications for minor variations. The Board will therefore prepare an issue an amended premises licence.

Major Variations

Once the application is complete, is relevant and correct, 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 at www.aberdeenshire.gov.uk .

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.

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 the variation 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.

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 will 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.

The Board must hold a hearing to consider an application for a major variation of a premises licence, therefore, the application will then be allocated to a meeting of the Board for consideration. Where all matters are agreed to between the applicants, consultees and the Board, the application will be classed as “non-contentious” and the Applicants will not normally be asked to be present or represented at the Board.

Where matters are not agreed by all parties or where there are objections to the application that cannot be resolved by way of mediation, the application will be classed as “contentious” and the Applicants will be asked to be present or represented at the Board to speak to their application.

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 an amended premises licence and an amended summary of the premises licence will then be issued by the Board.

The Board, when granting an application for major variation of premises licence, may make a variation of the conditions to which the licence is subject.

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 variation application in respect of the same premises and seeking the same variation lodged before the expiry of one year beginning with the date of the earlier refusal, unless the Board directed 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 Variation of a Premises Licence?

The grounds of refusal are –

- ◆ That the application made must be refused (because of the refusal of an earlier application)
- ◆ That the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives. The Licensing objectives are:
 - 1. Preventing crime and disorder**
 - 2. Securing public safety**

- 3. Preventing public nuisance**
- 4. Protecting and improving public health**
- 5. Protecting children from harm**

- ◆ That, having regard to –
 - The nature of the activities carried on or 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 in accordance with the proposed variation.
- ◆ That, having regard to the number and capacity of –
 - Licensed premises, or
 - Licensed premises of the same or similar description as the subject premises (taking account of the proposed variation)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.

How long will an application take to process

Minor Variations

A minor variation application without an accompanying transfer application will normally take between 3-4 weeks to process, grant and issue.

A minor variation application with an accompanying transfer 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 respect of the transfer application. Where there are relevant or foreign offences or other objections in relation to the transfer application, 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.

Major Variations (both with and without an accompanying transfer application)

The Licensing (Procedure) (Scotland) Regulations 2007 specifies that a Licensing Board must, within 42 days of receipt of a major variation 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 major variation application 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 major variation application.

More realistically, it could take between 3-4 months for a Board to process and issue such a licence. For example:-

- ◆ Application is received
- ◆ 2 week period to allow the application to be checked and for the applicant to correct/amend the application
- ◆ 4 period in which the Board gives notice of the application and publishes the application on its website and during which any objections and representations should be lodged (the consultation period is 21 days, but letters and notices need to be posted out in advance of the publication date to allow the applicant to display the site notice at the premises on the correct date)
- ◆ 2 weeks for the applicant to make any adjustments following representations made, or to allow for any mediation between parties to take place.
- ◆ 2-3 weeks to put the application to the Board for determination
- ◆ 2-3 weeks for the Board to notify all parties of the decision and prepare and issue the licence.

When will I get my Varied 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 varied premises licence will consist of –

- ◆ An amended premises licence coversheet
- ◆ The mandatory conditions
- ◆ The local conditions (including any made by the Board on granting the variation application)
- ◆ The current or an amended operating plan (docquetted)
- ◆ The current or an amended licensing objectives risk assessment (docquetted)
- ◆ The current or an amended layout plan (docquetted)
- ◆ The current or an amended constitution (docquetted) – Members' Clubs only

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. A copy of the mandatory conditions can be found at www.aberdeenshire.gov.uk

What are the local conditions?

The Board has a pool of local conditions which are attached to the licence on a case-by-case basis depending on the nature of the licensed premises. The Board can add, remove or alter local conditions when granting an application for variation of licence. A copy of the local conditions can be found at www.aberdeenshire.gov.uk

What Do I Need to do once the varied Licence is Issued?

Check the licence thoroughly

Once you have received your varied 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.

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 is attached at the end of this Guidance Note for information purposes.

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. This can be found at the following web address:-
- ◆ The Policy Statement for the Licensing Board to which you are making application

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 at http://www.aberdeenshire.gov.uk/licensing/occasional_apps.asp.

Paper copies of the application form and operating plan and further information is available from the Clerk at –

Aberdeenshire Council
St. Leonards
Sandyhill Road
Banff

AB45 1BH Legal Post LP6, Banff

Telephone 01261 813320

Fax 01261 815664

E-mail Fiona.stewart@aberdeenshire.gov.uk

Application Checklist

Completed Application Form	
Premises Licence	
Letter Explaining why Premises Licence cannot be produced	
7 x amended layout plans (where applicable)	
Amended operating plan (where applicable)	
Amended licensing objectives risk assessment (where applicable)	
Amended constitution (where applicable)	

Personal Licence for the proposed designated premises manager (where applicable)	
Transfer Application and ancillary documentation and fee (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 for the intended variation to take effect?