

**LICENSING (SCOTLAND) ACT 2005**

**SECTION 36**

**PREMISES LICENCE REVIEW**

**APPLICATION**

**LICENSING STANDARDS**

**INFORMATION PACK**

***September 2022***

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**LICENSING (SCOTLAND) ACT 2005**

**PREMISES LICENCE REVIEW APPLICATION INFORMATION PACK**

**1. Introduction**

The Licensing (Scotland) Act 2005 (‘the 2005 Act’) regulates the sale of alcohol in Scotland.

The Act is built around the 5 Licensing Objectives:

1. Preventing Crime and Disorder
2. Securing Public Safety
3. Preventing Public Nuisance
4. Protecting and Improving Public Health
5. Protecting Children and Young Persons from Harm

This information pack has been produced to assist any person wishing to make application to the licensing board for a premises licence review.

The pack defines licensed premises and a premises licence and details the procedures to be followed from initial complaint through to a premises licence review hearing in front of the licensing board. It also includes a specimen letter to the Clerk to the Licensing Board and a specimen Incident Log for recording incidents.

**2. Licensed Premises**

Alcohol can only be sold in licensed premises. Premises are granted a premises licence or occasional licence (for the licensing on an occasional basis of premises which are not ordinarily licensed) by a licensing board.

**3. Premises Licence**

A premises licence regulates the sale of alcohol in premises under the 2005 Act. The premises licence comprises a set of mandatory conditions; an operating plan and a layout plan:

Mandatory Conditions – all licensed premises must operate to a set of national mandatory conditions. In addition, a licensing board can impose local conditions in relation to the running of the premises (e.g. stewarding). A breach of any of these conditions can result in action being taken by the licensing board.

Operating Plan – the operating plan details how the premises will go about its business. The plan includes the core hours for the sale of alcohol; whether alcohol will be sold for consumption on or off the premises or both; any other activities allowed on the premises; the terms in which children and young persons are allowed access to the premises; and details of the Designated Premises Manager (DPM) who has daily responsibility for the premises.

Layout Plan – a layout plan is an architect’s drawing detailing the premises designated alcohol area and includes whether the premises are licensed for outdoor drinking and access terms in relation to children and young person access.

A premises licence is a public document and details of premises licences are held on the licensing register which can be accessed on the Argyll and Bute website, here –

[http://www.argyll-bute.gov.uk/law-and-licensing/licensing-registe](http://www.argyll-bute.gov.uk/law-and-licensing/licensing-register)r

It is expected that the premises licence holder (the licensee) and the Designated Premises Manager (the DPM) will run the premises in accordance with the 5 Licensing Objectives and the mandatory conditions and any local conditions.

Unfortunately there may be times when the operation of a licensed premises causes concern or is a nuisance and the 2005 Act allows for action to be taken in relation to any licensing complaints.

**4. Relationship with Other Regulatory Regimes**

It should be noted by any person considering applying for a premises licence review that the Scottish Government has made it clear that the 2005 Act must not duplicate other regulatory regimes. This means that the Argyll and Bute Licensing Board will not allow licensing legislation to be used where matters complained of should be dealt with by another regulator.  An example of this is noise nuisance.  The regulator responsible for investigating complaints of noise nuisance is the Council’s Environmental Health department with any evidence of noise nuisance being reported under the appropriate noise nuisance legislation.  Further information on this can be obtained from the Licensing Standards Officer.

**5. Licensing Standards Officers**

The Licensing (Scotland) Act 2005 introduced the role of the Licensing Standards Officer (LSO), who is responsible under the Act for providing guidance and information to interested parties; ensuring compliance by licence holders; and providing a mediation service for the purpose of avoiding or resolving disputes.

The LSOs can be contacted at:

**East Area** – Bute & Cowal and Helensburgh & Lomond

Raymond Park, Argyll and Bute Council, Helensburgh and Lomond Civic Centre, 38 East Clyde Street, Helensburgh, G84 7PG,

Tel: 01546 605519

**West Area**– Mid Argyll, Kintyre & Islay and Oban, Lorn & the Isles

Eric Dearie, Argyll and Bute Council, Kilmory, LOCHGILPHEAD, Argyll, PA31 8RT,

Tel: 01546 605519

Or at - [licensing.standards@argyll-bute.gov.uk](mailto:licensing.standards@argyll-bute.gov.uk)

**6. Licensing Complaints**

Licensing complaints are handled by the Licensing Standards Officers (LSOs). A complaint may be received directly by the LSO by telephone, e-mail or letter, or may be received as part of a review of premises licence application from the Clerk to the Licensing Board.

The role of the LSO in licensing complaints is that of a mediator, who will work with both sides in any complaint. The LSO remains impartial throughout and offers advice to both sides in an attempt to resolve the complaint.

If, through mediation, the complaint cannot be resolved, then under Section 36 of the 2005 act;

*“Any person may apply to the appropriate licensing board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.”* [(http://www.legislation.gov.uk/asp/2005/16/section/3](http://www.legislation.gov.uk/asp/2005/16/section/36)6)

The *grounds for review* are:

1. That one or more of the conditions to which the premises licence is subject has been breached; or
2. Any other ground relevant to one or more of the licensing objectives.

The remainder of this information pack will concentrate on the practical application of the above.

**7. Premises Licence Review Application to the Licensing Board – Initial Recording of Complaint**

* 1. Any person can make an application and the Argyll and Bute Licensing Board expects this to be done in writing to the Clerk to the Board, The Argyll and Bute Licensing Board, Kilmory, Lochgilphead, Argyll, PA31 8RT.
  2. The Clerk will pass the application to the Licensing Standards Officer (LSO) for the area where the licensed premises are situated. The LSO will make contact with the applicant and discuss the application process. For an application to be considered by the licensing board, the applicant will need to show evidence of the concerns that have led to the application being made.
  3. LSO contact with the applicant during the recording of the complaint is confidential and no details will be divulged to the premises licensee or any other party unless the applicant agrees to their details being made known. It should be noted however that a Review of Premises Licence hearing is a public forum where the licensing board may hear evidence form all involved (see below).
  4. The LSO will advise the licensee for the subject premises of the complaint and will make suggestions and recommendations in order to ameliorate the impact the business is having on the applicant or neighbourhood. The licensee will also be advised of the premises licence review process and that the premises may be the subject of a report to the licensing board.
  5. The LSO may also suggest a joint meeting between the applicant, the licensee and himself, as part of the process of addressing the complaint. If either side is not comfortable with this approach, then any/all meetings with the LSO will be carried out on a separate basis.
  6. The LSO will normally agree a 3 month monitoring period (Unless otherwise advised by the applicant) with the applicant and the licensee (jointly or separately) and during that time the applicant may be asked to maintain an incident log which will contain details of any detrimental effects the premises are having.
  7. If there is no improvement at the conclusion of the 3 month period the LSO will assist the applicant in raising a premises licence application to the Board. Alternatively, if the complaint has been resolved, the complaint will be logged and no further action will be taken at that time.

**8. Premises Licence Review Application to the Licensing Board – Submission of Application**

Where, after the 3 month monitoring period has elapsed, there has been no improvement, the following may then be implemented:

1. The LSO will assist the applicant in raising the premises licence review application to the licensing board (specimen letter attached).
2. The LSO will advise the licensee for the subject premises that the complaint is continuing to a review of premises licence application.
3. The LSO will submit a separate report for the attention of the licensing board and will liaise with the local police, the Council’s Environmental Health department and any other parties (including neighbours) that may be able to assist with the application.

It is reiterated that LSO involvement is impartial and any information received through LSO liaison, whether it supports the applicant’s version of events or not, will be included in the LSO’s report to the licensing board.

**9. Incident Log**

An incident log is a way for the applicant to formally record incidents involving the subject premises. The log is used for evidence gathering and to support the premises licence review application and the applicant’s version of events when the review comes to a licensing board premises licence review hearing.

The incident log must include the following and in a format that is easily readable at any hearing:

1. The name and address of the premises.
2. Time and date of each incident.
3. Nature of incident.
4. Details of any report to the police at the time of the incident including the time when the report was made.
5. Any other comments including whether the applicant has contacted the subject premises to complain and frequency of such contact.

A copy incident log is attached for reference with examples included. Blank copies will be supplied by the LSO during any review period.

**10. Environmental Health Noise Log**

Where the complaint is noise related, Environmental Health will issue the applicant a noise log as part of the complaint process. The noise log is similar to an incident log, in that it records incidents of noise nuisance caused by the premises.

**11. Licensing Board Involvement**

Section 38 of The 2005 Act places a duty on the licensing board to consider any review of premises licence application it receives and hold a hearing for this purpose. The Board does this in the following ways:

1. The licensing board will convene a hearing and will invite the following to participate and consider all information in relation to the application:
   1. The applicant;
   2. The licence holder of the subject premises;
   3. The LSO; and
   4. Any other party who may be able to provide information on the application
2. Each party above may be asked to speak in relation to the application.

3. The licensing board will then consider the application on the evidence provided.

**12. Licensing Board’s Powers on Review**

Once the licensing board has heard all the evidence in relation to the review of premises licence application it will deliver its ruling on whether the grounds for review have been established. Where the grounds for review have been established the actions open to the licensing board are:

* 1. Issue a written warning to the licence holder.
  2. Make a variation of the licence (which could include a reduction in hours of operation).
  3. Suspend the licence for such a period as the Board may determine.
  4. Revoke the licence

**13. Implications of Licensing Board Decision**

If the licensing board imposes either of actions 1 or 2 above, then the LSO will monitor and work with the subject premises. If the board imposes either of actions 3 or 4 above, the premises will cease trading for the period of suspension, or permanently if the premises licence is revoked.

If the licensing board rules that the grounds have not been established, then no further action can be taken and the review process is completed.

It should be noted that the licensing board has no power to consider any complaints that do not conform to the grounds for review above.

**14. Review of Licensing Board’s Decision to Vary or Suspend Licence**

Section 40 of the 2005 Act provides that where the licensing board has made a variation to, or suspension of, the premises licence, the board may on application by the premises licence holder, and if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.

**15. Conclusion**

As can be seen a premises licence review application is not a short process and it may take some time to resolve. However, it is imperative that the initial complaint and the application for a premises licence review are evidenced based and thoroughly investigated as it could result in the permanent closure of the subject premises with any decision or action taken by a licensing board being open to legal challenge.

Appendices / …

The Clerk to the Board

The Argyll and Bute Licensing Board

Kilmory

LOCHGILPHEAD

Argyll

PA31 8RT

**LICENSING (SCOTLAND) ACT 2005 – SECTION 36:**

**APPLICATION FOR REVIEW OF PREMISES LICENCE**

**PREMISES: *(name and full postal address)***

I refer to the above and after consultation with (*name*), Licensing Standards Officer, I submit this application for a review of premises licence.

The details of this application are as follows –

*Insert narrative which should include:*

* *what the application refers to (e.g. music noise; patron noise; other disorder caused by premises, etc.)*
* *the name of the premises;*
* *the date(s) the application refers to;*
* *any evidence accrued (incident log; reports to the police or Council, etc.);*
* *any reports to the police or Environmental Health with dates;*
* *any contact with the premises licence holder or the premises manager and the result of such contact;*
* *any support from neighbours/residents;\**
* *advice given by and action taken by the Licensing Standards Officer*

\*I am submitting this application as a personal application.

\*I am submitting this application as a group application and all participants have signed and addressed the application below.

*\*(Delete either of above as appropriate)*

I request that due consideration be given to this premises licence review application and that the licensing board holds a hearing under Section 38 of the Licensing (Scotland) Act 2005.

I also request that I be sent confirmation that this application is receiving attention.

Yours faithfully

*(Name)*

*\*Licensing Board requirements:*

*Single applicant - this letter can be used by a single applicant to request a premises licence review.*

*Group applicant – this letter can be used as a collective application (neighbours/residents). It should be signed by each neighbour/resident and include each individual address.*

*E-mail application - an application can be made by e-mail to*  [*licensing@argyll-bute.gov.uk*](mailto:licensing@argyll-bute.gov.uk) *marked for the attention of the Clerk to the Board and must include the information above.*

**LICENSING (SCOTLAND) ACT 2005**

**REVIEW OF PREMISES LICENCE APPLICATION**

**INCIDENT LOG**

**This incident log will be maintained for three months or a longer period agreed between the applicant and the Licensing Standards Officer**

**Period From: …………………………………** **Period To: ………………………………………**

**Premises: …………………………………………………………………………………………………………**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Date** | **Time of Incident** | **Incident Type** | **Police Contact**  **Yes/No** | **Time Reported** | **Comments**  ***(including description of incident)*** |
| *10/09/12* | *1:00am* | *Music Noise from Band* | *Yes* | *1.15am* | *The noise form the music system is unbearable. I have phoned the premises but they have taken no action* |
| *11/09/12* | *1:45am* | *Patron Noise* | *Yes* | *1:45am* | *People waiting outside for taxis are causing a noise. The police attended at 1:50am and noise has abated.* |
| *12/09/12* | *2:00am* | *Street Noise.* | *No* | *N/A* | *People shouting at each other. Looks like a drunken argument* |
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Signature ........................................................... Date .....................................................................