

**HIGHLAND LICENSING BOARD
GUIDANCE NOTE FOR VOLUNTARY ORGANISATIONS
LICENSING (SCOTLAND) ACT 2005**

All alcohol licensing law in Scotland is currently changing, as the Licensing (Scotland) Act 2005 is introduced. Voluntary organisations are also entitled now to apply for occasional licences under the Licensing (Scotland) Act 2005.

Until the provisions of the Licensing (Scotland) Act 1976 are repealed, voluntary organisations will still be able to apply for four **occasional permissions** per year under the Licensing (Scotland) Act 1976, using the existing procedure. The existing notice periods and fee of £10 per application will continue to apply to these occasional permission applications.

This guidance note sets out the position for voluntary organisations in relation to the new **occasional licences**.

The process is rigorous and applicants are encouraged to submit applications as early as possible especially for premises not recently licensed or where there might be public safety issues. Guidance notes for completion of the application forms will shortly appear on the Council's website.

The new regime benefits voluntary organisations with an increase from the 1976 Act position of 4 occasional permissions per year. Under the 2005 Act a single voluntary organisation may now hold over a 12 month period:

- Not more than 12 occasional licences of less than 4 days in duration
- Not more than 4 occasional licences of 4 days or more in duration;

Organisations may also note that the total number of days on which an occasional licence has effect must not exceed 56 during any 12 month period. The maximum duration of each occasional licence continues to be 14 days.

Voluntary organisations must submit their applications for occasional licences to the office of the Board with the application fee of £10 at least **28 days** prior to the event taking place, although it is recommended that applications are made as early as possible, and where possible, **at least six weeks before an event**. This is particularly advisable if applicants believe that there is any possibility of objections being received. Early applications are now necessary as the Act dictates that the Licensing Board must allow the Police and the Licensing Standards Officer 21 days to comment on any application. As the consultation period for occasional licences is fixed by statute the Board must strictly adhere to the time limits and cannot exercise discretion to receive late applications in the same way as it has in the past. The standard checks with the Highlands and Islands Fire and Rescue Service and the Council's Environmental Health Section will continue to be carried out as appropriate.

Application forms

The application forms for occasional licences are set by regulation under the 2005 Act and are more detailed than the application forms for occasional permissions. Part of the reason for this is that there is a requirement on licensing boards to include more detailed information on the licences themselves, particularly in relation to the

admission of children and young people. The information to be included on application forms for an occasional licence includes the following:

- (a) the name and address of the applicant,
- (b) a description of the premises in respect of which application is made,
- (c) a description of the activities to be carried on in the premises,
- (d) a statement of the period during which the licence is to have effect,
- (e) a statement of the times during which alcohol is to be sold on the premises,
- (f) a statement as to whether alcohol is to be sold for consumption on the premises, off the premises or both,
- (g) 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,
- (h) where alcohol is to be sold for consumption on the premises, a statement as to whether children (under 16) or young persons (16 & 17) are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—
 - (i) the ages of the children or young persons to be allowed entry,
 - (ii) the times at which they are to be allowed entry, and
 - (iii) the parts of the premises to which they are to be allowed entry,
- (i) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found

Occasional licences are subject to mandatory national licensing conditions set out on the Board's website, www.highland.gov.uk. **Breach of any of the conditions is a criminal offence.** Existing licensees are able still to apply for occasional licences under the Licensing (Scotland) Act 1976 for events before 31 August 2009 in the same way as voluntary organisations can apply for occasional permissions for events until that date.

Nature of Event

There is no stipulation in the 2005 Act that applications can only be made for particular events "arising from or related to the activities of the voluntary organisation" as there is under the 1976 Act. However, attention is drawn to mandatory condition 5 which must be attached to occasional licences issued to voluntary organisations under the Licensing (Scotland) Act 2005. This condition says "where a voluntary organisation is the holder of an occasional licence, alcohol can only be sold where the event is connected with the voluntary organisation's activities". As with all licence conditions, breach of the condition could lead to criminal proceedings.

Applications for fund raising dances and other events connected to the activities of the voluntary organisation will be regarded by the Board as a competent type of application. The Board may reject applications as incompetent where the application clearly cannot comply with one or more of the licence conditions. An application may be refused where one of the grounds of refusal referred to below applies.

Public Entertainment/Late Hours Catering Licences

Events may still require a Public Entertainment Licence or a Late Hours Catering Licence under the Civic Government (Scotland) Act 1982. Essentially either of these will be required where an admission fee is charged or food provided for consumption

off the premises after 11.00pm. The Clerk's office will be able to clarify the rules where there is any doubt.

Notification and objections

All applications for occasional licences under the 2005 Act will within seven days of being received be forwarded by the relevant Clerk or Depute Clerk to the Chief Constable and the relevant Licensing Standards Officer and to Environmental Health and the Fire Service if appropriate. At the same time as the Board gives notice of an occasional licence application to the Chief Constable and the Licensing Standards Officer the Board must publish details of the application for occasional licence on its website. The Chief Constable and the Licensing Standards Officer within 21 days of receiving an application can submit their views to the Board. For the Licensing Standards Officer this is an opportunity to submit comments which may include recommendations for additional conditions to be attached by the Licensing Board. The Board must consider any representations received from any other interested party provided the representations have been received before the end of the **seven day period** in which the application was advertised on the Board's website. After the seven day period, the Board has discretion as to whether to consider comments received.

Where no objections, representations or notices are received from the police and/or other statutory objectors there is no need for a hearing and applications can be delegated to the Clerk. However, where objections and/or representations have been received, the legislation provides that Boards must within seven days of receiving them provide the applicant with any information relevant to their application raised in objections, representations or in a notice provided by the Police and the applicant must be allowed to make comment on the objections or representations before the application is determined.

The Board must grant the application unless it has received one or more of the following:

- a notice from the appropriate chief constable in terms of the Act,
- an adverse report from a Licensing Standards Officer or
- a notice of objection or representation from any other party, relating to the application.

If any adverse comments or objections are received, the Board must consider whether any of the statutory grounds for refusal apply, and in doing so may hold a hearing at which parties can be represented. The hearing must, in terms of the legislation, be held within 42 days of the application having been received. If the Board considers that an application would be inconsistent with any of the following licensing objectives then the Board is obliged to refuse it. The licensing objectives are: preventing crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health, and protecting children from harm. The other grounds for refusal relate to the hours during which alcohol is to be sold, and the suitability of the premises. When considering the suitability of premises, the Board should bear in mind: (i) the nature of the activities proposed to be carried on in the premises to which the application relates, (ii) the location, character and condition of the premises and (iii) the persons likely to frequent the premises.

Determination

If the Board decides that one or more of the grounds for refusal applies, the Board must refuse the application. If the board decides that none of the grounds for refusal applies, the Board must grant the application. In most cases, as at present, consideration of applications will be delegated to the Clerk of the Board or a Depute.

Stewarding

Voluntary organisations should note that from 1st November 2007, when the relevant provisions of the Private Security Industry Act 2001 came into force, there is mandatory licensing of the private security industry. This means that it is an offence to employ unlicensed door stewards or “bouncers” at fundraising events. Volunteers who carry out these roles are exempt from the requirements of the Act but voluntary organisations may wish to take independent advice on the legality of their security arrangements at functions. For further information consult <http://www.the-sia.org.uk/home>.

Personal Licenceholders

Representatives of voluntary organisations may wish to give some consideration to making application for personal licences. From 1st September 2009, the Board will be able to grant occasional licences to personal licenceholders. Personal licenceholders applying for occasional licences will not be constrained by mandatory condition 5 which dictates that where a voluntary organisation is the holder of an occasional licence, alcohol can only be sold where the event is connected with the voluntary organisation's activities.

Statutory Organisations such as Community Councils or Community Companies cannot themselves apply for occasional licences.

Highland Licensing Board
September 2008