

2007 No. 453

LICENSING (LIQUOR)

The Licensing (Procedure) (Scotland) Regulations 2007

Made - - - - - *9th October 2007*

Laid before the Scottish Parliament *11th October 2007*

Coming into force - - - *1st February 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 21(6), 22(3)(a), 51(4), 58(2)(a), 61(4), 70(7), 79(5), 133, 134, 146(2) and 147(1) of, and paragraph 12(4) of schedule 1 to, the Licensing (Scotland) Act 2005^(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Licensing (Procedure) (Scotland) Regulations 2007 and come into force on 1st February 2008.

Interpretation

2.—(1) In these Regulations—

“Board” means a Licensing Board continued in existence by or established under section 5;

“variation application” means an application under section 29(1) for a variation of a licence which is not a minor variation (as defined in section 29(6)).

(2) Any reference in these Regulations to a numbered section is, unless the contrary is stated, a reference to the section so numbered in the Licensing (Scotland) Act 2005.

Meaning of “notifiable interest”

3. A person has a “notifiable interest” in neighbouring land for the purposes of section 21(1)(a) if that person is the occupier of that land.

Meaning of “neighbouring land”

4. Land is “neighbouring land” for the purposes of section 21(1)(a) if—

(a) it is within 4 metres in any direction of any boundary of the premises to which the application in question relates; and

(b) it is not part of—

(i) a road (within the meaning of section 107 of the New Roads and Street Works Act 1991^(b));

(ii) land covered by water; or

^(a) 2005 asp 16; see the definition of “prescribed” in section 147(1).

^(b) 1991 c.32.

- (iii) a railway line.

Documents to accompany premises licence application

5. A premises licence application must be accompanied by 6 additional copies of the layout plan required under section 20(2)(b)(ii) or such lesser number of copies as the Board may specify.

Publicity as to applications

6.—(1) Within 42 days of the date specified in paragraph (2), a Board is to give notice of a premises licence application or a variation application—

- (a) on the Board’s website; or
- (b) in a newspaper circulating in the area of the Board.

(2) That date—

- (a) in the case of an application falling within article 18 or 19 of the Licensing (Transitional and Saving Provisions) (Scotland) Order 2007^(a), is the “appropriate date” in relation to that application (in terms of article 20 of that Order); or
- (b) in any other case, is the date on which the Board receives the application.

(3) A notice under paragraph (1)(a) is to remain on the Board’s website for a continuous period of 21 days.

(4) Every notice under paragraph (1) is to specify—

- (a) the name of the applicant;
- (b) the name and address of any person representing the applicant for the purposes of the application;
- (c) the name and address of the premises to which the application relates; and
- (d) the date by which objections or representations in respect of the application may be made to the Board.

(5) A notice under paragraph (1) in respect of a premises licence application is to specify whether the application is for a licence for the sale of alcohol for consumption—

- (a) on the premises;
- (b) off the premises; or
- (c) both.

(6) The date specified under paragraph (4)(d) is to be no earlier than 21 days after the date on which the notice under paragraph (1)—

- (a) first appeared on the Board’s website; or
- (b) appeared in the newspaper.

Display of notice

7.—(1) Where a Board intends to give notice of an application under paragraph (1) of regulation 6, it is to notify the applicant of—

- (a) the date on which that notice—
 - (i) is first to appear on the Board’s website under sub-paragraph (a) of that paragraph; or
 - (ii) is to appear in a newspaper under sub-paragraph (b) of that paragraph; and
- (b) the date which is to be specified in the notice under regulation 6(4)(d).

(a) S.S.I. 2007/454.

(2) During the period specified in paragraph (3), the applicant is to display a notice of A4 size at or near the premises to which the application relates and in a place and at a height where the notice can conveniently be read by the public.

(3) That period is the period of 21 days starting with the date notified under paragraph (1)(a).

(4) Where a Board considers that a notice required by paragraph (2) has for any reason not been in place for the whole of the period specified in paragraph (3) or has been damaged during that period, it may require the applicant to display the notice for a further 21-day period.

(5) A notice required by paragraph (4) is to specify the last day of the period during which it has to be displayed as the date by which objections or representations require to be lodged.

(6) A notice displayed under this regulation is to be—

(a) subject to paragraph (7), in the form set out in Schedule 1 in the case of a premises licence application; and

(b) in the form set out in Schedule 2 in the case of a variation application.

(7) Where it appears to the applicant that the application is one falling within article 18 or 19 of the Licensing (Transitional and Saving Provisions) (Scotland) Order 2007, the notice may include a statement in the following terms:—

“The purpose of this application is to allow the applicant to obtain a premises licence under the Licensing (Scotland) Act 2005. It is not proposed to make any substantial change to the size and capacity of the premises, their general nature, any entertainment that they provide and the hours during which alcohol is sold.”.

(8) On the expiry of a 21-day period under paragraph (3) or (4), the applicant is to submit to the Board a certificate in the form set out in Schedule 3.

Periods for Board to notify applications

8.—(1) Paragraphs (2) and (3) make provision as to the period following a Board’s receipt of an application within which the Board requires to give notice of that application under the provision of the Act in question.

(2) That period is—

(a) 21 days under section 21(1) (except in a case to which paragraph (3) below applies);

(b) 7 days under section 33(4);

(c) 7 days under section 57(1);

(d) 7 days under section 69(1); and

(e) 21 days under section 73(1).

(3) Where a premises licence application is received by a Board prior to 1st September 2009, the period for giving notice under section 21(1) is 42 days.

Documents to accompany notice of premises licence application

9.—(1) Where a Board is giving a notice of a premises licence application which falls within paragraph (2), it must also—

(a) send to the person in question a copy of the operating plan and layout plan which accompanied the application; or

(b) provide that person with information as to where on a website a copy of those plans may be viewed.

(2) A notice falls within this paragraph if—

(a) it is a notice under paragraph (d) of subsection (1) of section 21; or

(b) it is a notice under paragraph (b), (c) or (e) of that subsection and it is given on or after 1st September 2009.

Objections and representations

10.—(1) This regulation applies in respect of objections and representations in respect of—

- (a) a premises licence application; or
- (b) a variation application.

(2) A Board may treat any objection or representation as not made where it receives the relevant notice of objection or representation after—

- (a) in a case where a requirement to display a notice has been imposed under regulation 7(4), the date specified in that notice as the date by which objections or representations require to be lodged; or
- (b) in any other case, the date specified under regulation 6(4)(d).

(3) Where a Board considers that there are good reasons not to treat an objection or representation as not made despite its being entitled to do so under paragraph (2), the Board is to consider whether it is in the interests of justice to postpone or adjourn the hearing at which the application in question is to be determined.

Notification of documents by Board

11.—(1) A copy of a notice required to be given by a Board under section 22(3)(a) must be given no later than 7 days prior to the hearing under section 23(2) in respect of the premises licence application in question.

(2) A copy of a notice required to be given by a Board under section 58(2)(a) must be given within 7 days of the Board receiving that notice.

(3) Where a chief constable has supplied a Board with a report under section 21(3)(b) in relation to a premises licence application and there is to be a hearing under section 23(2), the Board is to provide the applicant with a copy of that report no later than 7 days prior to that hearing.

Timetable for hearings under sections 23(2) and 30(3)

12. A hearing under section 23(2) or 30(3) to determine a premises licence application or variation application is to be held no later than 119 days after—

- (a) in a case where a requirement to display a notice has been imposed under regulation 7(4), the date specified in that notice as the date by which objections or representations require to be lodged; or
- (b) in any other case, the date specified under regulation 6(4)(d).

Timetable for other hearings

13.—(1) A hearing under section 33(9), 38(1), 59(4), 70(2) or 83(7) is to be held no later than 42 days after the relevant date specified in paragraph (2).

(2) That date, in the case of a hearing—

- (a) under subsection (9) of section 33, is the date on which the Board received from the chief constable the notice under subsection (6)(b) of that section;
- (b) under section 38(1), is the date on which the Board made the premises licence review proposal or received the premises licence review application;
- (c) under section 59(4), is the date on which the Board received the occasional licence application;
- (d) under section 70(2), is the date on which the Board received the extended hours application; and
- (e) under subsection (7) of section 83, is the date on which the Board received from the chief constable the notice under subsection (4)(b) of that section.

Representation at hearings

14.—(1) Subject to paragraph (2), a party may be represented by another person at a hearing held by a Board.

(2) A Board may decide not to hear representations from a person who claims to represent a party but, when requested to do so by the Board, is unable to produce written authority to that effect from that party.

Statement of reasons

15.—(1) A person entitled to require a statement of reasons under section 51(2), 61(2), 70(5) or 79(3) may do so by sending a notice to the clerk of the Board within 14 days of receiving a notice from the Board under whichever of the provisions specified in paragraph (2) is applicable.

(2) Those provisions are sections 51(1), 61(1), 70(4) and 79(2).

(3) Any statement of reasons required in terms of such a notice as is referred to in paragraph (1) is—

- (a) to be issued within 14 days of receipt of that notice by the clerk of the Board; and
- (b) to be in the form set out in Schedule 4.

Notice of determinations under Part 3

16. The notices required to be given by a Board under section 51(1) must be given within 7 days of the grant or refusal of the application in question.

Reasons under section 12(1)(b)

17. Reasons to be given to a Local Licensing Forum under section 12(1)(b) must be given within 42 days of the decision in question being made.

Occasional licences

18.—(1) On the same day as a Board gives notice of an occasional licence application under section 57(1)(a) of the Act or as soon as reasonably practicable after that, it is to publish details of the application on its website.

(2) Details published under paragraph (1) are to remain on the website for a continuous period of 7 days.

(3) A Board may treat an objection or representation under section 58(1) of the Act as not made where it receives the relevant notice of objection or representation after the end of the period of 7 days referred to in paragraph (2).

Personal licence application submitted with premises licence application

19.—(1) Paragraph (2) applies where there are submitted to a Board at the same time—

- (a) a premises licence application; and
- (b) a personal licence application made by the person who is named as the premises manager in the operating plan which accompanies the premises licence application.

(2) The personal licence application is to be determined no later than the date on which the premises licence application is determined.

Issuing and updating of licences

20.—(1) Any documents required to be issued under section 26(1) or 76(1) are to be issued within 28 days of the Board granting the premises licence application or the personal licence application, as the case may be.

(2) A Board is to carry out the duties in subsection (2) of section 49 within 14 days of whichever is the later of–

- (a) the occurrence of the relevant event specified in subsection (1) of that section; and
- (b) the date on which the premises licence in question came into the Board's possession.

(3) A Board is to carry out the duties in subsections (2) to (7) of section 89 within 14 days of whichever is the later of–

- (a) the occurrence of the event specified in whichever of those subsections is applicable; and
- (b) the date on which the personal licence in question came into the Board's possession.

(4) Any replacement licence or summary issued under section 53 or 92 is to be issued within 14 days of the Board being satisfied under whichever of those sections is applicable.

Notice of conviction

21. The notice required to be given by a Board to the appropriate chief constable under subsection (2) of section 83 must be given within 21 days of–

- (a) the Board receiving a notice under subsection (1)(a) of that section; or
- (b) the Board becoming aware as described in subsection (1)(b) of that section.

St Andrew's House,
Edinburgh
9th October 2007

KENNY MACASKILL
A member of the Scottish Executive

SCHEDULE 3

Regulation 7(8)

LICENSING (SCOTLAND) ACT 2005

CONFIRMATION OF SITE NOTICE

Full name of Applicant/Agent & address (include postcode)	
Name & Address of premises (include postcode)	

A notice regarding an application for a premises licence or for variation of such a licence is required to be displayed for a period of not less than 21 days. If the Licensing Board is not satisfied that this has taken place, it may order the display of the notice for a further 21 days.

Should the notice without any fault or intention of the applicant be removed, obscured or defaced before the end of the 21 days for which it must be displayed, the applicant must take reasonable steps for its protection and if need be its replacement. If this has happened, the applicant must note it and set out what he or she has done to correct the situation (in the box below).

CONFIRMATION OF DISPLAY OF NOTICE

I (Full name of applicant)	
confirm that a notice regarding an application for a premises licence/variation of such a licence has been displayed as prescribed for a period of not less than 21 days.	
The dates of display being	
Applicant's Signature	
Date	

SCHEDULE 4

Regulation 15(3)

FORM OF STATEMENT OF REASONS

LICENSING (SCOTLAND) ACT 2005 - STATEMENT OF REASONS

1. Name and address of Licensing Board

2. Date of Licensing Board meeting
3. Name and address of applicant/agent * (*delete as appropriate)

4. Name and address of premises (if applicable)	5. Materials before the Board and parties present
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6. Type of application

7. Names and addresses of all parties present
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8. Preliminary issues (for example, pleas to the competency or relevancy of objections)
--

9. Summary of submissions made

10. Decision(s) taken
10a. Reasons for decision

11. Legal powers used to come to decision

12. Date statement of reasons issued

Name Clerk/Representative of clerk*
***(Delete as appropriate)**

Date

Print Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to various procedural matters under the Licensing (Scotland) Act 2005 (“the Act”). The Act will be fully operational with effect from 1st September 2009. These Regulations come into force on 1st February 2008, the date as from which it will be possible to lodge a licence application under the Act.

The Regulations are principally concerned with setting out procedures and timescales in connection with the processing of applications for premises licences, occasional licences and personal licences and with handling applications for variation of a premises licence. In addition, regulations 3 and 4 define terms used in the Act in relation to notifying premises licence applications to neighbouring occupiers. Regulation 14 makes provision about representation at hearings before a Licensing Board. Regulation 15 relates to the provision of statements of reasons by Licensing Boards and regulation 17 sets a timescale for a Licensing Board to notify a Local Licensing Forum of the reasons for the Board deciding not to follow advice or a recommendation from the Forum. There is provision made for the timescales for taking action in connection with the issuing and updating of licences (regulation 20) and for notifying relevant criminal convictions to a chief constable (regulation 21).

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