

ABERDEENSHIRE LICENSING BOARDS

North, Central and South Divisions

Licensing (Scotland) Act 2005

SCHEME OF DELEGATION

This Scheme of Delegation covers the powers of the three Divisional Licensing Boards for Aberdeenshire, in terms of the Licensing (Scotland) Act 2005. This Scheme of Delegation was approved by each of the South, Central and North Divisional Licensing Boards on 7th June 2017, 14th June 2017 and 28th June 2017 and is **effective from 28th June 2017**.

The Boards recognise that any application should only be determined by the Board where necessary and any straightforward matters should be considered by the Clerk or any member of the Clerk's staff having authority to do so, to save resources and to create as little inconvenience to applicants as possible.

The Boards therefore agree that only those applications and matters which by statute are required to be considered by the Board will be submitted to them for determination and other applications will be determined by the Clerk (her Depute Clerks or persons appointed to assist them) in accordance with the following Scheme of Delegation

1. MATTERS RESERVED TO THE LICENSING BOARD			
	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
1.1	Determination of Licensing Board Policy	S6 and Sch. 1, para 10(2)(a)	Determining the Board's policy for the purposes of a Licensing Policy Statement or any Supplementary Licensing Policy Statement.
1.2	Determination of Overprovision of Licensed Premises	S7 and Sch.1, para 10(2)(b)	Determining, for the purposes of any such statement, whether there is overprovision of licensed premises, or licensed premises of any particular description, in any locality.
1.3	Annual Function Statement	S9A	Approving and publishing an annual statement of the Board's Functions.
1.4	Annual Financial Statement	S9B	Approving and publishing an annual financial statement of the Board's income and expenditure

1. MATTERS RESERVED TO THE LICENSING BOARD			
	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
1.5	Premises Licence Application	S23 and Sch.1, para 10(2)(c)	Determining a premises licence application;
1.6	Premises Licence Major Variation Application	S30 and Sch.1 para 10(2)(d)	Determining a premises licence variation application where the variation sought is not a minor variation
1.7	Premises Licence Transfer Application (Conviction)	S33, S34 and Sch. 1 para 10(2)(e)	Determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant or foreign offence
1.8	Provisional Premises Licence Confirmation	S.46 and Sch. 1 para 10(2)(i)	Refusing an application for confirmation of a provisional premises licence;
1.9	Temporary Premises Licence	S47	Determining a Temporary Premises Licence Application
1.10	Personal Licence (Conviction)	S74 and Sch. 1 para 10(2)(f)	Determining a Personal Licence application or a personal licence renewal application where the applicant has been convicted of a relevant or foreign offence
1.11	Conducting a Hearing	S39, S84 and Sch.1 para 10(2)(g)	<p>Conducting a hearing under the Act, including taking any of the following steps:</p> <p>1.9.1 At a review hearing in respect of a premises licence where necessary in terms of the licensing objectives flowing from the sale of alcohol:</p> <ul style="list-style-type: none"> (i) Issuing a written warning to the premises licence holder; (ii) Revoking or suspending the premises licence; or (iii) Making a variation of the premises licence; or (iv) Making an order revoking, suspending or endorsing a personal licence. <p>1.9.2 Such hearings will be conducted by means of written submissions in the first instance, where it is appropriate to do so.</p>

1. MATTERS RESERVED TO THE LICENSING BOARD			
	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
1.12	Closure Order	S.97 and Sch. 1 para 10(2)(h)	Making a Closure Order

2. MATTERS DELEGATED TO THE CLERK, DEPUTE CLERKS OR ANY PERSONS APPOINTED TO ASSIST THEM IN CONSULTATION WITH THE CONVENOR IN THE FIRST INSTANCE			
	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
2.1	Notice of Convictions	S44(7A), S83(7A)	Determining whether to hold a licence review hearing or to take no further action upon receipt of a notice from the Chief Constable which does not contain a recommendation to vary, suspend, revoke or endorse the licence in question
2.2	Occasional Licence or Extended hours ("Fast Track")	S57(4), S69(4) and Sch.1 para 10(1)	Determining whether an application for an occasional licence or occasional extension requires to be dealt with quickly
2.3	Occasional Licence (Objection/Contrary to Policy)	S59, and Sch.1 para 10(1)	Determining whether or not the Licensing Board will hold a hearing to determine an application for an occasional licence where an objection, representation or a notice recommending refusal from the Chief Constable or Licensing Standards Officer or where the application is contrary to the terms of the Board's Policy
2.4	Occasional Licence (Objection)	S59 and Sch. 1 para 10(1)	Where a decision has been taken by the Convenor and Clerk not to hold a hearing in terms of Section 59(4) of the Act, the determination of the application following an opportunity for the applicant to comment on the representation in terms of Section 59(5)

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	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
2.5	Occasional Licence or Extended Hours (lodged late or contrary to Policy)	S59, S70 and Sch.1 para 10(1)	Determining whether to accept an application for an occasional licence or occasional extension that has been lodged late in terms of Board's Policy
2.6	Extended Hours Application (objection/Contrary to Policy)	S70 and Sch1. Para 10(1)	Determining whether or not the Board will hold a hearing to determine an application for extended hours where an objection, representation or a notice recommending refusal from the Chief Constable or Licensing Standards Officer or where the application is contrary to the terms of the Board's Policy
2.7	Extended Hours Application (Objection)	S70 and Sch.1 para 10(1)	Where a decision has been taken by the Convenor and Clerk not to hold a hearing in terms of Section 70(2) of the Act, the determination of the application following an opportunity for the applicant to comment on the representation in terms of Section 70(3)
2.8	Personal Licence (Licence Previously Surrendered – hearing)	S74(7)	Where the applicant has surrendered a personal licence within the period of 3 years prior to an application for a further personal licence being made by that person to decide whether the reasons for surrender of the previous personal licence warrant consideration of the application by the relevant Board

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	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
2.9	Pool Table, dart Boards & Gaming Machine Submissions	Sch1. Para 10(1)	Considering written submissions (including photographs) regarding children's' access to areas containing pool tables, dart boards or gaming machines in respect of an Application for premises licence or major variation. If the Convenor is not satisfied with the submissions, the application will be determined by the Board (Central and South only)
2.10	Relevant Offences Submissions	Sch.1 Para 10(1)	Considering written submissions regarding relevant offences in connection with a premises licence application or transfer of premises licence application. If the Convenor is satisfied with the submissions then the Clerk may determine whether or not to cite the applicant to attend the Board Hearing (Central and South only)
2.11	Power to relieve procedural errors	S135 and Sch.1 para 10(1)	To relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if the failure is due to a mistake, oversight or other excusable cause, and it is considered appropriate in all of the circumstances to relieve the failure.
2.12	Rejection of Frivolous or Vexatious Objections	S22(4), S36(6), s58(3)	Determining whether to reject a notice of objection or representation or request for a premises licence review received by the Board where they consider it to be frivolous or vexatious.

3. MATTERS DELEGATED TO THE CLERK OR DEPUTE CLERKS TO THE LICENSING BOARDS OR ANY PERSONS APPOINTED TO ASSIST THEM

	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
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3. MATTERS DELEGATED TO THE CLERK OR DEPUTE CLERKS TO THE LICENSING BOARDS OR ANY PERSONS APPOINTED TO ASSIST THEM

	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
3.1	Premises Licence Minor Variation Application	S29 and Sch. 1 para 10(1)	Determining any premises licence variation application where the variation sought is a minor variation
3.2	New Premises Manager Variation	S29(6)(c) and Sch.1 para 10(1)	Determining a premises licence variation application for a variation to substitute a new premises manager
3.3	Premises Licence Application or Variation Application Hearing Citation	Sch. 1 para 10(1)	Determine whether to cite an applicant to a hearing for a premises licence application or a variation application where the variation is not a minor variation
3.4	Premises Licence Transfer Application (No Conviction)	S46 and Sch.1 para 10(1)	Determining any application for the transfer of a premises licence where the applicant has not been convicted of a relevant or foreign offence;
3.5	Provisional Premises Licence Confirmation	S46 and Sch.1 para 10(1)	Determining any application for confirmation of a provisional premises licence - where no variation (other than a minor variation) has been made to the operating plan or layout plan for the premises to which the licence relates since the provisional licence was issued or since a variation of the provisional premises licence was granted.
3.6	Premises Licence Review Proposal	S37 and Sch.1 para 10(1)	Determining whether to make a premises licence review proposal
3.7	Obtaining further information for the purposes of a Review Hearing	S38(5) and (6) and Sch 1. Para 10(1)	To exercise the powers under section 38(5) and (6) for the purposes of a review hearing to obtain further information, request any person to attend to provide information and/or request production of any document at a review hearing

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	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
3.8	Premises Licence (Licence Production)	S49(30 and Sch.1 para 10(1)	To require a premises licence holder to produce the premises licence
3.9	Occasional Licence (No objection)	S59 and Sch.1 para 10(1)	Determining an application for an occasional licence – where no objections or representations have been received, nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal including late applications which the Convenor has approved in terms of 2.5 above.
3.10	Occasional Licence or Extended Hours (Funeral Teas)	Sch.1 para 10(1)	Determining an application for an occasional Licence or occasional extension that has been lodged in respect of a funeral tea.
3.11	Occasional Licence Conditions	S60 and Sch.1 para 10(1)	To impose conditions under S60 in respect of an occasional licence as necessary or expedient for the purpose of any licensing objective
3.12	Extended Hours Application (No objection)	s.79 and Sch.1 para 10(1)	Determining an application for extended hours where no objections or representations have been received nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal including applications which the Convenor has approved in terms of 2.5 above
3.13	Personal Licence (no Convictions)	S.74 and Sch. 1 para 10(1)	Determining a personal licence application or a personal licence renewal application where the applicant has not been convicted of a relevant or foreign offence

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	Nature of Function/ Application	Relevant Provision in Licensing (Scotland) Act 2005	Function
3.14	Personal Licence (Licence Previously Surrendered)	S77(6), S87(3)	To grant personal licence where the applicant has previously surrendered their personal licence under S77(6) or their licence has been revoked under S87(3)
3.15	Revocation of Personal Licence	S87(3) and Sch. 1 para 10(1)	The revocation of a personal licence where the licence holder has not complied with the requirements of S87(1) of the Act.

4. Other Matters

Any matters which are not the subject of a specific delegation in terms of this Scheme of Delegation and are not prescribed by the Licensing (Scotland) Act 2005 shall be determined by the Clerk (or any person appointed to assist her) as appropriate unless the nature of such matter is considered to be appropriate to be determined by the Licensing Board at a meeting arranged by the Clerk in consultation with the Convenor of the Licensing Board.

5. Exercise of Delegated Power

The Clerk, the Depute Clerks and any other member of staff appointed to assist them may elect not to use their delegated powers in a particular case, in which case the matter will be referred to the Licensing Board.

6. Legislation

These delegations are subject to any necessary alterations arising from amendments to Legislation, Regulations, Codes of Practice or Government Circulars. In the event of a conflict between the terms of this Scheme of Delegation and the relevant legislations, the Scheme of Delegation shall be deemed amended to accord with the provisions of the said relevant legislation.