

# **SHETLAND ISLANDS AREA LICENSING BOARD**

## **LICENSING (SCOTLAND) ACT 2005**

### **GUIDANCE ON OBJECTIONS AND REPRESENTATIONS – PREMISES LICENCES**

This document contains information available in the Licensing (Scotland) Act 2005 and various Regulations made by the Scottish Government. It should be read in conjunction with the Board's pro-forma objections/representations form. If you are unclear about the information provided or what to do next, please contact your solicitor for advice.

#### **Objections**

Any person may, by notice to the Licensing Board, object to an application for a premises licence on any of the following grounds –

- (a) that the subject premises are excluded premises – these are essentially garages or garage shops, but there is an exemption for premises which are the principal source, in their community, for groceries or for petrol or derv;
- (b) that the application must be refused under any of the following sections of the Licensing (Scotland) Act 2005 –
  - 25(2) - the Board must refuse any subsequent premises licence application in respect of the same premises made before the expiry of the period of one year beginning with the date of the earlier refusal, unless at the time of the earlier refusal the Board directed that section 25(2) would not apply to any subsequent application or the Board is satisfied that there has been a material change of circumstances since the earlier refusal;
  - 64(2) - the Board must refuse an application for 24 hour opening unless it is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period; or
  - 65(3) - the Board must refuse an application if the off-sales hours proposed are before 10am or after 10pm or both;
- (c) that the Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, which are –
  - preventing crime and disorder;
  - securing public safety;
  - preventing public nuisance;
  - protecting and improving public health; and
  - protecting children from harm;

(d) that, having regard to –

- (i) the nature of the activities proposed to be carried on in the subject premises;
- (ii) the location, character and condition of the premises; and
- (iii) the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol;

(e) that, having regard to the number and capacity of –

- licensed premises; or
- licensed premises of the same or similar description as the subject premises,

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.

Note: Anyone lodging an objection on ground (e) above will require to specify the locality on which they are basing their objection.

If the Board determines that none of the grounds for refusal apply, it must grant the application. If it determines that any of the grounds for refusal apply, it must refuse the application.

### **Special Procedure for Certain Applications**

As part of the implementation of the Licensing (Scotland) Act 2005, there will be a Transition period from 1 February 2008 until 1 September 2009. During that time, licensees who hold licences under the Licensing (Scotland) Act 1976 will require to apply to the Board for new licences under the 2005 Act. Where an application for a premises licence shows that the size and capacity of the premises; their general nature; any entertainment to be provided on the premises; and their trading hours are to be substantially the same as under the old licence, and the application is made by a date specified by the Scottish Government\*, the Board is not entitled to refuse the application on the ground of overprovision (ground (e) above).

\*You can check the relevant date(s) by contacting Board staff at the address at the end of this document.

Where the application is not a provisional premises licence application and the Board is minded to refuse the application only on ground (d) above, but would not be so minded if certain modifications were made to the character and condition of the premises, the Board is to grant the application. The applicant will have a period of 12 months (which may be extended) to carry out the modifications.

### **Representations**

Any person may also, by notice to the Licensing Board, make representations concerning the application, including, in particular, representations –

- (i) in support of the application;
- (ii) as to modifications which the person considers should be made to the operating plan accompanying the application; or
- (iii) as to conditions which the person considers should be imposed.

## **General**

Where the Licensing Board receives a notice of objection or representation, the Board must –

- give a copy of the notice to the applicant no later than 7 days before the date of the hearing at which the application is to be considered; and
- have regard to the objection or representation in determining the application,

unless the Board rejects the notice because it considers the objection or representation to be frivolous or vexatious. Where the Board rejects an objection or representation on those grounds, it may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

## **Licensing Board Staff – Contact Details**

by writing to: Clerk to Licensing Board  
Legal and Administration  
Shetland Islands Council  
4 Market Street  
Lerwick  
Shetland  
ZE1 0JN

by telephone to: 01595 744088

by email to: [legal.services@shetland.gov.uk](mailto:legal.services@shetland.gov.uk)

by fax to: 01595 744585