

# **SHETLAND ISLANDS AREA LICENSING BOARD**

**21 January 2008**

## **Licensing (Scotland) Act 2005 - Implementation Update/Fee Setting**

### 1. Introduction

1.1 The purpose of this report is to provide an update on recent developments to implement the Licensing (Scotland) Act 2005, and to ask the Board to determine the fees which will apply in our Area and to decide on certain other ancillary matters relating to the transition period.

### 2. Implementation Update

2.1 My report to the meeting of the Board of the Board on 15 October 2007 detailed the steps taken at that time by the Scottish Government towards implementation of the 2005 Act and a copy of the Scottish Government's Implementation Update No. 4 was circulated at that meeting.

2.2 By way of update, I now attach a copy of the letter dated 10 December 2007 from the Head of Licensing at the Scottish Government, being their fifth and final implementation update before the start of the transition period, on 1 February 2008 (Appendix A).

2.3 As is indicated in the update letter, the fees regulations which are also enclosed (Appendix B) have been made and are now presented to the Board to determine the fees applying here, within the parameters set by the Regulations. The update letter mentions raising awareness and I understand that the Scottish Government have issued a briefing pack to all licensees and a copy is accessible from a dedicated website at the following address: [www.infoscotland.com/licensingact](http://www.infoscotland.com/licensingact).

More locally, the Shetland Alcohol and Drug Forum arranged an open meeting on 17 January 2008 which the Depute Clerk was due to attend, on the subject of the new licensing laws. Train Shetland are planning to host a seminar on 5 February 2008 for licensees to raise awareness of the courses for the personal licence holders qualification. My staff shall also be arranging to send out, before the end of January, the first notice to all licensees and registered clubs, to advise of the

appropriate date for lodging a premises licence application under the 2005 Act, to take advantage of the limited “grandfather” rights.

### 3. Fees

- 3.1 The fees regulations which have now been made and a copy of which is attached to the appended implementation update letter, make provision as to fees payable to Licensing Boards under the 2005 Act. Some of those fees, most notably those for the initial premises licence applications and for the annual premises licence fee, are to be determined by the Licensing Board, subject to the specified upper limits set out in Regulations 6 and 8 respectively. The fees are to be set subject to the general rule on cost recovery set out in Regulation 13, namely that the Board are to have regard to the desirability of ensuring that the total fees payable under the Regulations in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board and also by the Council, in administering the Act generally during the period.
- 3.2 As regards the likely costs to be incurred by the Board and the Council in administering the 2005 Act over the forthcoming transition period, mainly falling within financial year 2008/09, there are a number of variables which make the exercise somewhat imprecise. It is certainly likely that during the transition period there will be an increased draw on staff resources to administer the system and in addition there will be the costs of the Council in administering the Licensing Forum, employing a Licensing Standards Officer (a dedicated LSO has still to be appointed) and there will be extra postage, stationery, publication and training costs involved. As compared with the current financial year’s recharge costs for the Licensing Board which are in the order of £60,000 the likely overall costs for the Board and the Council in administering the 2005 Act next financial year, 2008/09, are likely to be in the region of £90-100,000. The ongoing costs of administration for subsequent years are likely to be of that order although some efficiencies may be achieved as the system beds in.
- 3.3 As regards the likely income next year, again there will be a number of variables which make the exercise an imprecise one. Based on information received from the Council Finance Department as to the rateable value of existing premises, I would estimate that the likely overall level of fee income if the initial premises licence application fees were set at the maximum levels, would be approximately £120,000 for 2008/09, but that the ongoing income from 2009/10 onwards, even if the annual fees were set at the maximum level, would only be in the order of £45,000.

- 3.4 Given the foregoing I would propose that the Board set the fees provided for in Regulations 6 and 8 of the Fees Regulations for the initial premises licence application and the annual fee, respectively, at the maximum levels as shown in the following table.

Initial Premises Licence Fee	Annual Premises Licence Fee
Category 1 - £200	Category 1 - £180
Category 2 - £800	Category 2 - £220
Category 3 - £1,100	Category 3 - £280
Category 4 - £1,300	Category 4 - £500
Category 5 - £1,700	Category 5 - £700
Category 6 - £2,000	Category 6 - £900

The above Categories 2 - 6 are by reference to the rateable value of the premises as set out a Regulation 5. Category 1 is in respect of premises which have no rateable value, and also apply to Club premises and certain other premises as described in Regulation 4.

- 3.5 I also propose that the Board set the following fees for the miscellaneous applications provided for in Regulation 11(1) and 12(2) namely:

Section 33(1)	(Transfer on Application of Licenceholder) including variation	£75
Section 33(1)	(Transfer on Application of Licenceholder) with no variation	£50
Section 34(1)	(Transfer on Application by Person other than Licenceholder, including Application for Variation)	£75
Section 34(1)	(Transfer on Application of Person other than Licenceholder, with no variation)	£50
Section 47(2)	(Temporary Premises Licence)	£75
Section 92(1)	(Replacement Personal Licence)	£10
Section 29(1)	(Application for Variation other than a Minor Variation)	£50

#### 4.0 Other Administrative Matters for Transition

- 4.1 The Transitional Order which has been made specifies the appropriate date by which existing licensees are required to apply for a premises licence in order to take advantage of the limited “grandfather rights”, namely not requiring to lodge planning, building control or food hygiene certificates and not being subject to the overprovision ground of

refusal. Those dates are by reference to when the existing 1976 Act licence falls due for renewal as follows:

- (a) renewal in March - appropriate date is 7 March 2008;
- (b) renewal in June - appropriate date is 6 June 2008;
- (c) renewal in October - appropriate date is 3 October 2008; and
- (d) renewal in January - appropriate date is 16 January 2009.

As regards Registered Clubs it is left to the Board to determine the appropriate date for existing Clubs to lodge their premises licence. I would propose that to allow Clubs (of which there are some 20 in Shetland) as much time as possible to prepare, that the Board set the last of those dates, namely 16 January 2009 as the appropriate date by which a Club should lodge a premises licence application in the transition period.

- 4.2 As regards the Board meeting dates during the transition period, there will no longer be the requirement which formerly existed under the 1976 Act to hold fixed "quarterly" meetings. Although such meeting dates had previously been scheduled for 17 March, 16 June and 20 October 2008, it may be that the timetable for processing applications, including requirement for giving notice to neighbours, followed by the 21 day objection period, would mean that some of those dates may not be suitable for the business arising. I would propose that to allow sufficient flexibility in the matter, that the Board delegate authority to the Clerk (which would include the Depute Clerk and such Assistants as may be appointed to assist the Clerk) to fix the future Board meeting dates during the transition period, subject to consultation with the Chairman, and in liaison with Committee Services.

I would also propose that the Board confirm that the Clerk (including the Depute etc) would have authority to make such administrative/procedural arrangements as may be necessary, for the purpose of ensuring the smooth handling of business during the transition period.

## 5.0 Recommendation

- 5.1 I recommend that the Board note the terms of this report and approve the proposals set out within Section 3 and 4 above.

Clerk to the Licensing Board

Ref: Z0/14 BCH

14 January 2008

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Licensing Stakeholders

10 December 2007

## LICENSING (SCOTLAND) ACT 2005 – IMPLEMENTATION UPDATE 5

1. I am very pleased to be able to provide the final implementation update before the start of the transition period.

### Secondary Legislation

2. Since my last update, the following regulations have been made:-

- The Licensing (Fees) (Scotland) Regulations 2007;
- The Licensing (Vessels) (Scotland) Regulations 2007;
- The Licensing (Relevant Offences) (Scotland) Regulations 2007.

3. All regulations and orders made under the Act are available on the Office of Public Sector Information website – [www.opsi.gov.uk](http://www.opsi.gov.uk). The Fees regulations have been made recently and are not yet available on this website. A copy is attached for ease of reference. Please note that the Cabinet Secretary has signed these regulations so we are not able to consider any further comments on them.

4. The Licensing (Fees) (Scotland) Regulations 2007 give flexibility to licensing boards to set premises licence application fees and premises licence annual fees, up to capped amounts. This approach addresses the concern that the consultation proposals - standardised fees across the country - would have resulted in some boards falling short of meeting their running costs while others could make a "profit" from fee income. Licensing Boards will now wish to look again at the information they provided during the consultation process to determine the fee levels that will apply in their area. I am aware that some boards have already gained information on the rateable value of premises in their area and that information will no doubt assist them in setting fees.

5. The table attached shows the complete list of regulations put in place since the Act was passed by Parliament. The remaining regulations on drinks promotions are being prepared and we are likely to issue them for consultation early next year. These regulations *do not* affect the transition process.

## Raising Awareness

6. As many of you are aware, there is a significant amount of work taking place to help prepare the licensed trade for the transition period. We were happy to take part in a series of briefing seminars organised by the Scottish Grocers' Federation and by the Scottish Licensed Trade Association. These events proved to be an excellent way of briefing licensees on the new Licensing Act and the process that they will be going through. We will be happy to take part in seminars and briefing events organised by other stakeholders. We are also aware that some licensing boards are holding briefing events and meetings to help the trade prepare for transition. Various approaches are being taken including newsletters, 'sector specific' briefings, licensing surgeries, and more general briefing seminars.

7. To support the work being done by trade bodies and licensing boards, we will be issuing briefing packs directly to licensees very shortly. These will set out key information about the Act and the transition period, in particular the key dates by which applications need to be made and "FAQs". The pack will also contain specimen forms to encourage licensees to practice completing them before they are invited by the Licensing Board to complete the "real" forms. A summary leaflet has also been inserted in the key trade papers and magazines and a dedicated website – [www.infoscotland.com/licensingact](http://www.infoscotland.com/licensingact) - is available to assist the licensed trade.

## Finally

8. Finally, I would like to take this opportunity to record my thanks to the various stakeholders who have assisted the licensing team over the last 2 years. The process of drafting various regulations has been challenging at times, but we have been assisted greatly by the trade bodies, drinks producers, the police, licensing boards, and licensing solicitors who have taken the trouble to respond to various consultations and engage with us in an open and frank way. That approach has ensured that the regulations we have put in place deliver the Government's policy intentions while being fair to stakeholders.

9. As some of you know, I am moving to take up new responsibilities within the Criminal Law and Licensing Division at the end of January. While my new role is primarily about Criminal Justice, my new team will also have responsibility for taking forward policy on off-sales promotions. Arrangements are in hand to replace me as Head of the Licensing Team and I shall encourage my successor to get to know you all as soon as possible.

Yours sincerely



**GARY COX**  
Head of Licensing Team

## Regulations Tracker

	Title	Made	Into force	Outstanding action
1	The Licensing (Scotland) Act 2005 (Commencement No. 2 and Transitional Provisions) Order 2006 (SSI 2006 No. 286 (C.28))	25/05/06	See order	None
2	The Licensing (Scotland) Act 2005 (Commencement No. 3) Order 2007 (SSI 2007 No. 129 (C.15))	24/02/07	See order	None
3	The Licensing (Appointed Day and Transitional Provisions) (Scotland) Order 2007 (SSI 2007 No. 128)	27/02/07	01/05/07	None
4	The Occasional Licence (Scotland) Regulations 2007 (SSI 2007 No. 96)	20/02/07	01/02/08	None
5	The Licensing (Training) (Scotland) Regulations 2007 (SSI 2007 No. 95)	20/02/07	01/05/07	None
6	The Licensing (Designated Airports) (Scotland) Order 2007 (SSI 2007 No. 97)	20/02/07	01/02/08	None
7	The Licensing Qualification (Scotland) Regulations 2007 (SSI 2007 No. 98)	20/02/07	01/09/09	None
8	The Personal Licence (Scotland) Regulations 2007 (SSI 2007 No. 77)	14/02/07	01/02/08	None
9	The Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007 (SSI 2007 No.93)	20/02/07	01/09/09	None
10	The Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007 No. 76)	14/02/07	01/02/08	None
11	The Licensing (Closure Orders) (Scotland) Regulations 2007 (SSI 2007 No. 35)	31/01/07	01/09/09	None
12	The Licence Transfer (Prescribed Persons) (Scotland) Regulations 2007 (SSI 2007 No. 34)	31/01/07	01/02/08	None
13	The Licence Register (Scotland) Regulations 2007 (SSI 2007 No. 33)	31/01/07	01/02/08	None
14	The Licensing (Miscellaneous Amendments) (Scotland) Regulations 2007 (SSI 2007 No. 313)	05/06/07	01/09/09	None
15	The Licensing (Mandatory Conditions) (Scotland) Regulations 2007 (SSI 2007 – 457)	11/10/07	01/02/08	None

16	The Licensing (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007 No. 336)	21/06/07	01/02/08	None
17	The Licensing (Training of Staff (Scotland) Regulations 2007 (SSI 2007 No. 397)	30/08/07	01/02/08	None
18	The Premises Licence (Scotland) Regulations 2007 (SSI 2007 No. 452)	09/10/07	01/02/08	None
19	The Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007 No. 453)	09/10/07	01/02/08	None
20	The Licensing (Transitional and Saving Provisions) (Scotland) Order 2007 (SSI 2007 No. 454)	09/10/07	01/02/08	None
21	The Licensing (Mandatory Conditions No.2) (Scotland) Regulations 2007 (SSI 2007 No. 546)	Laid in draft	01/02/08	None. Regs have now been passed by Justice Committee
22	The Licensing (Fees) (Scotland) Regulations 2007	04/12/12	01/02/08	None
23	The Licensing (Vessels) (Scotland) Regulations 2007 (SSI 2007 No. 545)	28/11/07	01/02/08	None
24	The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513)	15/11/07	01/02/08	None
25	The Licensing (Scotland) Act 2005 (Commencement No. 4) Order 2007 (SSI 2007 No. 472 (C.39))	18/10/07	See order	None
26	The Licensing (Drinks Promotions) (Scotland) Regulations 2008	TBA	01/09/09	Preparing regulations for consultation

Gavelox 6/12/07

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 SCOTTISH STATUTORY INSTRUMENTS
 

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2007 No.

## LICENSING (LIQUOR)

## The Licensing (Fees) (Scotland) Regulations 2007

<i>Made</i> - - - -	2007
<i>Laid before the Scottish Parliament</i>	2007
<i>Coming into force</i> - -	1st February 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 136(1) and (2) and 146(2) of the Licensing (Scotland) Act 2005(a) and all other powers enabling them to do so.

In accordance with section 136(3) of that Act, they have consulted such bodies as appeared to them to be representative of the interests of Licensing Boards, councils and those likely to be affected by these Regulations.

**Citation and commencement**

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

**Interpretation**

2. In these Regulations—

“the Act” means the Licensing (Scotland) Act 2005;

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

“relevant Board”, in relation to premises, means the Board within the area of which the premises are situated.

**Categories of premises – general**

3.—(1) The category into which premises fall for the purposes of these Regulations is to be determined by reference to the position as at the date on which the fee in question is due.

(2) In particular, the rateable value of premises for the purposes of these Regulations is to be that shown on the valuation roll in respect of the date in question.

(3) Where a rateable value is changed with retrospective effect so as to place premises on a particular date in a different category from that by reference to which a fee due on that date has been paid, the appropriate amount is to be paid to the relevant Board or repaid by it (as the case may be).

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(a) 2005 asp 16.

- (4) In paragraph (3), “the appropriate amount” is the difference between—
- (a) the fee paid; and
  - (b) the fee which would have been payable had the new rateable value been shown on the valuation roll as at the date on which the fee was due.

#### **Premises in category 1**

- 4.—(1) Premises fall within category 1 if—
- (a) they are not entered on the valuation roll or there is no rateable value or a nil value shown in respect of them on that roll;
  - (b) their main function is to provide a visitor attraction and any sale of alcohol on the premises will fall within paragraph (2);
  - (c) they are used wholly or mainly for the purposes of a club falling within the description specified in regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007(a); or
  - (d) their main function is to provide accommodation, they are not open to the public other than for the provision of accommodation, and any alcohol sold on the premises is to be consumed on the premises by guests being accommodated there.
- (2) A sale of alcohol falls within this paragraph if—
- (a) the alcohol is not to be consumed on the premises; and
  - (b) it is considered by the relevant Board as likely to be incidental to other activities carried on on the premises.

#### **Premises in categories 2 to 6**

- 5.—(1) Premises which fall within category 1 cannot fall within categories 2 to 6.
- (2) Subject to paragraph (1), premises fall within—
- (a) category 2 if their appropriate rateable value is between £1 and £11,500;
  - (b) category 3 if their appropriate rateable value is between £11,501 and £35,000;
  - (c) category 4 if their appropriate rateable value is between £35,001 and £70,000;
  - (d) category 5 if their appropriate rateable value is between £70,001 and £140,000;
  - (e) category 6 if their appropriate rateable value is over £140,000.
- (3) In a case where part of licensed premises falls within one rating unit and part within one or more other rating units, the “appropriate rateable value” of the licensed premises is to be equal to the highest rateable value shown on the valuation roll in respect of any one of the rating units in question.
- (4) In any other case, the “appropriate rateable value” of licensed premises means the rateable value shown on the valuation roll in respect of those premises or of larger premises of which they form part.
- (5) In paragraph (3), “rating unit” means lands and heritages in respect of which there is a single entry on the valuation roll.

#### **Application for premises licence**

- 6.—(1) The fee payable in respect of an application under section 20(1) of the Act (other than a provisional premises licence application) is to be determined by the relevant Board but is not to exceed—
- (a) £200 in the case of premises within category 1;
  - (b) £800 in the case of premises within category 2;
  - (c) £1,100 in the case of premises within category 3;

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(a) S.S.I. 2007/76.

- (d) £1,300 in the case of premises within category 4;
- (e) £1,700 in the case of premises within category 5;
- (f) £2,000 in the case of premises within category 6.

(2) Where a Board decides to determine fees lower than the maximum specified in paragraph (1), it must—

- (a) determine different fees for the different categories specified in that paragraph; and
- (b) set those fees by reducing each of the fees in that paragraph by an identical percentage.

(3) Any fee payable under paragraph (1) is due on the date on which the application in question is received by the Licensing Board.

#### **Annual fee for premises licence**

7.—(1) Where a premises licence is in effect or is suspended, the holder of that licence must make payment of an annual fee in respect of the performance in relation to that licence of functions by the relevant Board, the council within the area of which the premises are situated and that council's Licensing Standards Officers (other than functions in respect of which a separate fee is specified under these Regulations).

(2) The first annual fee under paragraph (1) is due—

- (a) on 1st October 2009 in the case of a licence which takes effect on 1st September 2009; or
- (b) in any other case, 30 days after the date on which the licence takes effect.

(3) Subsequent annual fees are due on 1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday.

(4) A Licensing Board may allow an annual fee under this regulation to be paid in 4 or 12 equal instalments over the course of the year following the date on which the fee would otherwise be due.

(5) Where a Board allows a fee to be paid as described in paragraph (4), this does not affect the date on which that fee is due for the purposes of regulation 3.

#### **Amount of annual fee**

8.—(1) The annual fee payable under regulation 7 is to be determined by the relevant Board but is not to exceed—

- (a) £180 in the case of premises within category 1;
- (b) £220 in the case of premises within category 2;
- (c) £280 in the case of premises within category 3;
- (d) £500 in the case of premises within category 4;
- (e) £700 in the case of premises within category 5;
- (f) £900 in the case of premises within category 6.

(2) Where a Board decides to determine fees lower than the maximum specified in paragraph (1), it must—

- (a) determine different fees for the different categories specified in that paragraph; and
- (b) set those fees by reducing each of the fees in that paragraph by an identical percentage.

(3) Where a first annual fee is payable in accordance with regulation 7(2)(b), that fee is not to exceed—

$$A \times \frac{B}{365}$$

Where—

A is the full annual fee which the Board would charge for the relevant year in respect of premises in the same category as the premises in question; and

B is the number of days between the date on which the first annual fee for the premises in question is due and the next 1st October.

#### **Notification of annual fee**

9.—(1) Each Licensing Board is to give notification in accordance with paragraph (2) to every holder of a premises licence liable to pay a fee to that Board under regulation 7.

(2) Notification under paragraph (1) is to be given no later than 30 days before the date on which the fee is due and is to specify the amount of the fee payable.

#### **Applications in relation to provisional premises licences**

10.—(1) The fee payable in respect of an application under section 20(1) of the Act for a provisional premises licence is to be the fee which would be payable under regulation 6(1) in respect of an application made on the date in question in relation to premises within category 1.

(2) The fee payable in respect of an application under section 46(1) of the Act for confirmation of a provisional premises licence is—

$$A-B$$

Where—

A is the fee which would have been payable under paragraph (1) of regulation 6 had an application to which that paragraph applies been made in respect of the premises on the same date as the application under section 46(1); and

B is the amount already paid under paragraph (1) above.

#### **Miscellaneous applications**

11.—(1) The fee payable in respect of an application falling within paragraph (3) is to be determined by the Board to which the application is made.

(2) Different fees may be determined in respect of different applications falling within paragraph (3) but, subject to regulation 14(2), a Board must charge the same fee for every application falling within a particular sub-paragraph of that paragraph.

(3) An application falls within this paragraph if it is an application under—

- (a) section 33(1) of the Act (transfer on application of licence holder) which includes an application for variation under section 35(1);
- (b) section 33(1) of the Act which does not include an application for variation;
- (c) section 34(1) of the Act (transfer on application of person other than licence holder) which includes an application for variation under section 35(1);
- (d) section 34(1) of the Act which does not include an application for variation;
- (e) section 47(2) of the Act (temporary premises licence); or

- (f) section 92(1) of the Act (replacement personal licence).

#### **Application to vary premises licence**

12.—(1) The fee payable in respect of an application under section 29(1) of the Act is—

- (a) £31 if the application is one referred to in section 31(1) of the Act and any other variation sought in the application is a minor variation;
- (b) £20 if the application seeks only a minor variation or variations and does not fall within sub-paragraph (a).

(2) The fee payable in respect of any other application under section 29(1) of the Act is to be determined by the relevant Board and different fees may be determined in respect of different applications.

#### **Determining fees**

13. In determining any fee under regulation 6(1), 8(1), 11(1) or 12(2), a Board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board, and the council for the area of that Board, in administering the Act generally during that period.

#### **Variation of fees**

14.—(1) Annual fees payable under regulation 7(3) may be varied from year to year.

(2) A fee determined under regulation 6(1) or 11(1) may be varied from time to time but—

- (a) such a fee may not be varied so that the variation comes into effect less than a year after the date with effect from which the fee in question was first determined or last varied; and
- (b) a fee determined under regulation 6(1) may not be varied with effect from a date earlier than 1st September 2009.

#### **Application for occasional licence**

15. The fee payable in respect of an application under section 56(1) of the Act is £10.

#### **Application for extended hours**

16. The fee payable in respect of an application under section 68(1) of the Act is £10.

#### **Application for personal licence**

17. The fee payable in respect of an application under section 72(1) of the Act is £50.

#### **Publication of fees**

18. Each Board is to take such steps as it considers appropriate to publish details of any fee determined by that Board under these Regulations.

A member of the Scottish Executive

St Andrew's House,  
Edinburgh

2007

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision as to fees payable to Licensing Boards under the Licensing (Scotland) Act 2005. Provision is made for some fees to be determined by the Boards, subject to specified upper limits in certain cases and to the general rule on cost recovery in regulation 13. Other fees are of set amounts specified in the Regulations.

Fees for premises licence applications and annual fees for such licences are dealt with in regulations 6 to 8 and 10. The fee for a personal licence application is set by regulation 17.