

# **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 as laid down in section 23(5) of the Licensing (Scotland) Act 2005 –

- (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;
  - 65(3) - the Board must refuse an application if the off-sales hours proposed are before 10am or after 10pm or both; or
- (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence
- (c) that the Licensing 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 and young persons 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 Licensing Board considers that the premises are unsuitable for use for the sale of alcohol;

(e) that the Licensing Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, 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 Licensing 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.

Where the Licensing Board considers that— (a) they would refuse the application as made, but (b) if a modification proposed by them were made to the operating plan or layout plan (or both) for the subject premises accompanying the application, they would be able to grant the application, the Licensing Board must, if the applicant accepts the proposed modification, grant the application as modified.

### **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.

A person giving a notice of Objection or a notice of Representation may include in the notice any information that the person considers may be relevant to consideration by the Licensing Board of any ground for refusal including, in particular, information in relation to— (a) the applicant, (b) where the applicant is neither an individual nor a council, a connected person in relation to the applicant, or (c) any person who would be an interested party in relation to the subject premises if the application were to be granted.

## **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, including any information in relation to the applicant, connected person or interested party, 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 Shetland Islands Area Licensing Board  
Governance & Law  
Shetland Islands Council  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

by telephone to: 01595 744550

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