

Public Entertainment Licensing – Guidance

Orkney Islands Council

Civic Government (Scotland) Act 1982

These notes are for guidance only and are not an authoritative statement of the procedures and provisions relating to applications for licences and licences issued under the Civic Government (Scotland) Act 1982 (the 1982 Act). Any person who requires further information should consult the Head of Legal Services, as undernoted, or a solicitor.

Licensing Requirement

1. Orkney Islands Council (the Council) has resolved that a public entertainment licence under section 41 of the 1982 Act shall be required for the use of any premises as a place of public entertainment by way of the provision of fairgrounds, funfairs, amusement arcades, circuses and other entertainments of a similar type whether as the sole purpose of the event to be held in or on the premises or as part of an event taking place and shall, for the avoidance of doubt, include:
 - premises used for amusement devices being rides, machines, contrivances, structures or other such equipment including side stalls and side-shows, tents, booths or similar enclosed structures, which are installed or erected and operated for or in connection with the amusement or entertainment of the public, including without prejudice to the foregoing generality bouncy castles, carousels and bungee jumping and bungee jumping equipment,
 - premises used as video machine arcades or parlours or other arcades or parlours with automatic or other machines intended for entertainment or amusement, including amusement arcades,
 - premises used for performing animals,
 - premises used for circuses,
 - premises used for fairgrounds,
 - premises used for funfairs, including merry-go-rounds, roundabouts, swings, switchback railways, skittle alleys, coconut shies, hoop-las, shooting galleries, mechanical riding, driving or boating contrivances or anything similar to any of the foregoing and including travelling funfairs,
 - premises used for travelling shows.

2. "Place of public entertainment" means any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation and includes land, but does not include:
 - an athletic or sports ground while being used as such;
 - premises in respect of which a licence is required under section 41A of that Act (Indoor Sports Entertainment) while such premises are being used for the purposes mentioned in that section;
 - an educational establishment while being used as such;
 - premises belonging to or occupied by any religious body while being used wholly or mainly for purposes connected with that body;
 - premises licensed under the Theatres Act 1968 or Section 1 of the Cinemas Act 1985;
 - premises in respect of which there is a club gaming permit (within the meaning of section 271 of the Gambling Act 2005) or a prize gaming permit (within the meaning of section 289 of that Act);
 - premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect in which public entertainment is being provided during the licensed hours within the meaning of that Act;
 - premises in which machines for entertainment or amusement are being provided incidentally to the main purpose or use of the premises where that main purpose or use is not as a place of public entertainment; or
 - such other premises as the Scottish Ministers may specify.

All Applications

Data Protection

3. The information provided on application forms will be used by the Council to enable decisions to be made on applications. The Council is required to collect the information in terms of legislation. Applicants' information will be shared with a number of agencies which the Council is obliged to consult before making decisions on applications.
4. The Council is obliged to make available some information submitted on application forms. The Council publishes electronic public registers in the Related Downloads section of the following Council webpage:
<http://www.orkney.gov.uk/Service-Directory/C/Civic-Government-Licences---Approved-Licence-Lists.htm>.
5. The Council has published a guide to your rights under Data Protection legislation and how you can exercise these. This information is available on the Council's website at <http://www.orkney.gov.uk/Council/D/Data-Protection-Policy.htm> or can be requested by contacting the Council directly.

6. Information about how the Council will process your personal information is available on the Council's website at <http://www.orkney.gov.uk/Online-Services/privacy.htm>.

Conditions

7. The Council may attach reasonable conditions to licences as it sees fit, with each application being dealt with on its own merits. The licence holder will be required to comply with the standard conditions which will form part of the licence when granted. These will usually accompany this document, but can be obtained from the Head of Legal Services, as undernoted, and are published at http://www.orkney.gov.uk/Service-Directory/P/Public-Entertainment_2.htm. In all cases, the offering or giving of live prizes shall be prohibited.

Determination of and Duration of Licences

8. A licence will normally be issued after the elapse of 42 days from receipt of an application. In certain circumstances, for example where objections have been received, applications can take considerably longer to be determined. A temporary licence shall remain in force, unless previously suspended or revoked, for a period of up to 6 weeks. A permanent licence shall remain in force, unless previously suspended or revoked, for a period of either one year from the date when it comes into force or three years, dependent upon the application submitted. The Council can also determine a shorter period in any case, dependent upon the circumstances. The licence is not transferable.

Licence to be Retained

9. The licence must not be altered, erased or defaced in any way, must be kept clean and legible and must not be lent to or used by any other person. Should the licence be lost or become defaced or illegible the licence holder shall obtain a replacement from the Council on payment of the appropriate fee. The licence holder shall produce his/her licence within 5 days of being requested to do so by an officer of Police Scotland, the Scottish Fire and Rescue Service or the Council.

Return of Licence

10. A licence holder shall deliver his/her licence to the Council:
 - upon ceasing to operate the activity of public entertainment;
 - within 7 days of receiving notice of the coming into effect of a decision of the Council to suspend or vary the terms of the licence, or the decision of a Court to revoke it.

Notification of Convictions or Material Change of Circumstances

11. The licence holder shall notify the Council of any conviction or material change within 14 days of the event. "Material change" means any change of circumstances affecting the licence holder (e.g. change of his/her name or address) or the activity to which the licence relates, including any particulars referred to in the application for grant or latest application for renewal of the licence. If in doubt, notify the Council of any changes.

Notification of Material Alterations

12. The licence holder shall not make or permit to be made any material change to the premises without the prior written consent of the Council unless in accordance with a requirement imposed by or in pursuance of any enactment other than Parts 1 or 2 of the 1982 Act. If in doubt as to whether consent is required, contact the Council.

Application Form and Fees

13. Application forms are available online at http://www.orkney.gov.uk/Service-Directory/P/Public-Entertainment_2.htm or from:
 - Head of Legal Services, Council Offices, School Place, Kirkwall KW15 1NY;
 - Email licensing@orkney.gov.uk;
 - Telephone 01856 873535 extensions 2229 or 2232.
14. Applications must be lodged with the Head of Legal Services, Corporate Services, Orkney Islands Council at the address above no later than 6 weeks before the first day of the commencement of the activity.
15. Applicants who would like Council staff to check their applications must arrange an appointment in advance to ensure that staff will be available when they would like to come in.
16. Application forms must be completed legibly in block capital letters in black ink or typed. All questions must be answered.
17. Applicants must declare any convictions, subject to the terms of the Rehabilitation of Offenders Act 1974. This legislation is available at www.legislation.gov.uk. If applicants are in any doubt as to whether to declare convictions, they must obtain independent legal advice. If applicants wish to declare that they have no convictions, they must write "None" at the question on the form. They cannot leave the question blank. If applicants do not declare something which should have been declared, they may be prosecuted for failure to declare and this will affect the processing time and procedure for their application.
18. Incomplete applications shall be returned to the applicant.

Processing the Application

19. Applications will be referred to Police Scotland, the Scottish Fire and Rescue Service and any relevant department of the Council for comment.
20. Applications must be considered within 3 months of being lodged and the Council must reach a decision within 9 months.
21. If an application is granted, a licence will be issued.
22. If, during the processing of an application, the Council receives any objection or representation, we will send a copy to the applicant. The application and the objection or representation will then be referred to a meeting of the Licensing Committee. The applicant will be invited to attend the meeting and given the opportunity to address the Committee.
23. If an application is refused, or granted conditionally, the applicant for a permanent licence is entitled to ask the Council within 21 days to give reasons for such refusal, or the imposition of such conditions, and thereafter is entitled to appeal to the Sheriff against the decision on various grounds. Applicants should seek the advice of a solicitor if matters should get to that stage.

Prior Refusal

24. If applicants have applied for and been refused a public entertainment licence, unless their circumstances have altered, their applications will be unlikely to be granted.
25. If refused, applicants cannot apply for the same kind of licence in respect of the same activity or for the same premises, within one year of that refusal unless there has been a material change in circumstances.

Offences

26. The following are criminal offences liable, on summary conviction, to a fine:
 - carrying on an activity for which a licence under the Civic Government (Scotland) Act 1982 is required without such a licence;
 - failing to comply with a condition of a licence;
 - making a false statement when filling in the application form;
 - failing to notify the Council of a material change in the circumstances of a licensee;
 - failing to obtain the consent of the Council before making any material change to the premises to which the licence relates;
 - failing to surrender the licence (1) after it has been suspended or varied or (2) when the licensee has given up the activity to which it relates.
27. The above list is not exhaustive and reference should be made to the 1982 Act for all offences under that Act.

Temporary Licences

28. Temporary licences may be granted for a period not exceeding 6 weeks.
29. Completed application forms for temporary public entertainment licences must be returned to the address above along with:
 - the appropriate fee – refer to current fees on our website at http://www.orkney.gov.uk/Service-Directory/L/Licences_2.htm;
 - evidence of public liability insurance with a reputable insurance company for a sum acceptable to the Council – £5 million in respect of amusements, including inflatable equipment and small rides; and £10 million in respect of larger rides and equipment;
 - certificates of suitability issued by or on behalf of certified independent examiners in relation to each piece of equipment;
 - location plan(s) to the scale of 1:500 showing the location of the premises to be used; and
 - written confirmation from the owner of any premises that the applicant has permission to (a) make unrestricted use of the premises or (b) use the premises for a specific purpose.
30. Where applications are made in respect of tented structures the following details must accompany the application:
 - an internal layout plan of the structure to a scale of not more than 1:50 to include the seating arrangements, width of gangways, fire exit positioning and widths, safety lighting and its method of operation, also fire fighting equipment and any other relevant details;
 - stewarding arrangements;
 - sanitary accommodation;
 - assurance as to the flame retardant properties of the tented structure;
 - first aid provisions; and
 - the names, business address and telephone numbers of any catering companies who may be in attendance.
31. Where applications are made in respect of tented or other temporary structures, applicants must complete a Fire Safety Checklist for Temporary Structures, available online at http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm or from the address above.

Permanent Licences

32. Completed application forms for permanent public entertainment licences must be returned to the address below along with:
- the appropriate fee – refer to current fees on our website at http://www.orkney.gov.uk/Service-Directory/L/Licences_2.htm;
 - evidence of public liability insurance with a reputable insurance company for a sum acceptable to the Council – £5 million in respect of amusements, including inflatable equipment and small rides; and £10 million in respect of larger rides and equipment;
 - certificates of suitability issued by or on behalf of certified independent examiners in relation to each piece of equipment;
 - location plan(s) to the scale of 1:500 showing the location of the premises to be used;
 - written confirmation from the owner of any premises that the applicant has permission to (a) make unrestricted use of the premises or (b) use the premises for a specific purpose;
 - an internal layout plan of the premises to a scale of not more than 1:50 to include the seating arrangements, width of gangways, fire exit positioning and widths, safety lighting and its method of operation, also fire fighting equipment and any other relevant details;
 - stewarding arrangements;
 - sanitary accommodation;
 - first aid provisions; and
 - the names, business address and telephone numbers of any catering companies who may be in attendance.
33. Where applications are made in respect of permanent structures, applicants must complete a Fire Safety Checklist for Permanent Structures, available online at http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm or from the address above.
34. A Site Notice must be displayed at the premises for a continuous period of 21 days from the date of submission of the application. A Site Notice should not be displayed until the applicant has received confirmation from the Council that the application is satisfactory and can be processed. The Council will agree a date with the applicant for display of a Site Notice.
35. A Site Notice and a Compliance Notice may be obtained online at http://www.orkney.gov.uk/Service-Directory/P/Public-Entertainment_2.htm or from the address below and must be returned to that address after 21 days to certify that the display requirement has been complied with. If the Site Notice is not displayed or the Compliance Notice is not returned, the Council shall advertise notice of the application in the local press to allow representations and objections to be made. If this is required, any decision on the application shall be delayed and the cost of the advertisement must be paid by the applicant.

36. The Compliance Notice should be returned to the address below, at least 21 days after the date from which the Site Notice is first displayed in accordance with paragraph 28 above, but no later than 25 days from that date.

Orkney Islands Council 2013.

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