

# Guidance – Premises Licence Applications

## Orkney Islands Area Licensing Board

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## 1. General

Licensing of premises where alcohol is sold is governed by the Licensing (Scotland) Act 2005 (the Act) and associated Regulations. These are available from <http://www.legislation.gov.uk>.

Premises are subject to a premises licence, covering all the activities carried on in those premises. These activities must be described in an operating plan, which forms part of the application process.

The premises must also be identified by a layout plan, which forms part of the application process.

Applications must also be accompanied by a statement providing information about disabled access and facilities at the premises.

Although this document refers primarily to applications for new premises licences, provisional premises licences and personal licences, much of the information also relates to applications for:

- Confirmation of provisional premises licence.
- Transfer of premises licence.
- Variation of premises licence.
- Temporary premises licence.
- Extended hours in premises.
- Occasional licences.

The Orkney Islands Area Licensing Board (the Board) publishes information, application forms, guidance and other documentation on the following Council webpage:

[http://www.orkney.gov.uk/Service-Directory/L/Alcohol\\_Licensing.htm](http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm).

## **2. Data Protection**

The information provided on applications to the Board will be used by the Board to enable decisions to be made on applications. The Board is required to collect the information in terms of legislation. Applicants' information will be shared with a number of agencies which the Board is obliged to consult before making decisions on applications.

The Board is obliged to make available some information submitted on application forms. The Board publishes electronic public registers in the Related Downloads section of the following Council webpages:

<http://www.orkney.gov.uk/Service-Directory/C/Current-Register-of-Premises.htm> and

<http://www.orkney.gov.uk/Service-Directory/O/Occasional-Licences.htm>.

## **How we may use your Information**

### **Data Processor**

Your personal information will be processed by Orkney Islands Area Licensing Board, School Place, Kirkwall, KW15 1NY. You can contact the Board on 01856 873535 extensions 2229 or 2232 or email [licensing@orkney.gov.uk](mailto:licensing@orkney.gov.uk).

### **Data Protection Officer**

The Board's Data Protection Officer is Gavin Mitchell, Clerk to the Licensing Board, who can be contacted using the contact details for the Board as set out above.

## **Your rights**

- The right to be informed about how your information will be used.
- The right of access to your personal information.
- The right to rectification, which is the right to require the Board to correct any inaccuracies or omissions.
- The right to request the erasure of any personal information held by the Board where the Board no longer has legal reason to hold the information.
- The right to request that your information is only processed in certain ways.
- The right to data portability.
- The right to object to the Board processing your personal information.

These are not absolute rights and there may be circumstances where the Board is legally obliged to process your information in a particular way.

Orkney Islands Council has published a guide which sets out in detail your rights and how you can exercise them. 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 on 01856 873535 or [corporateservices@orkney.gov.uk](mailto:corporateservices@orkney.gov.uk).

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>.

## **Sharing your information**

The Board is legally obliged to share certain data with other public bodies such as HMRC and will do so where the law requires this. The Board will also generally comply with requests for specific information from other regulatory and law enforcement bodies where this is necessary and proportionate. Information is also analysed internally in order to provide management information, inform service delivery reform and similar purposes.

## **Transferring your information outside the UK or European Economic Area**

The Board will not transfer personal data outside either the UK or the European Economic Area (EEA) unless this cannot be avoided. The Board will only transfer data outside the UK and the EEA when it is satisfied that the party which will handle the data and the country it is processing it in will provide adequate safeguards for personal privacy. On the occasions when it does transfer your information outside the UK or the European Economic Area, the Board will inform you.

## **Profiling and automatic Decision making**

The Board does not use profiling or automated decision-making processes. Some processes are semi-automated (such as anti-fraud data matching) but a human decision maker will always be involved before any decision is reached in relation to you.

## **How long do we keep your information?**

The Board will only keep your information for as long as necessary. Full details of how long the Board usually retains your information can be found in the Orkney Islands Council's Retention and Disposal Schedule which is published on the Council's website here: [http://www.orkney.gov.uk/Files/Council/Council-Plans/OIC\\_Retention\\_Disposal\\_Schedule.pdf](http://www.orkney.gov.uk/Files/Council/Council-Plans/OIC_Retention_Disposal_Schedule.pdf). However, there may be circumstances where we may need to keep your information for longer. Once the Board no longer needs to keep your information, it will be securely destroyed.

## **Right to complain**

If you are unhappy with the way the Board has processed your personal data you have the right to complain. Any complaints regarding your data should be addressed to the Data Protection Officer. If the matter is not resolved, you can contact the Information Commissioner's Office. The address and contact details for the Information Commissioner's Officer are:

45 Melville Street

Edinburgh

EH3 7HL

Telephone: 0131 244 9001

Email: [scotland@ico.org.uk](mailto:scotland@ico.org.uk)

## **3. Statement of Alcohol Licensing Policy**

Applicants should read the Board's current Statement of Alcohol Licensing Policy and take it into account when preparing applications.

The Board's Statement of Alcohol Licensing Policy is available from the Related Downloads section of the following Council webpage and paper copies can be supplied on request:

<http://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.

## **4. Disabled Access and Facilities Statement**

An application for premises licences must be accompanied by a Disabled Access and Facilities Statement.

The form of Statement is available from the Related Downloads section of the following Council webpage:

[http://www.orkney.gov.uk/Service-Directory/L/Alcohol\\_Licensing.htm](http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm).

## 5. Certificates in respect of Planning, Building Standards and Food Hygiene

An application for premises licences must be accompanied by certificates under section 50 of the Act in relation to:

- Planning.
- Building standards.
- Food hygiene (which includes drinks).

Applicants should contact the following services at Orkney Islands Council to request the appropriate certificates:

- the Planning service (information about how to contact Planning officers is published at <http://www.orkney.gov.uk/Service-Directory/D/Development-Management.htm> or email [planning@orkney.gov.uk](mailto:planning@orkney.gov.uk));
- the Building Standards service (email [building\\_standards@orkney.gov.uk](mailto:building_standards@orkney.gov.uk) or telephone 01856 873535 extension 2729); and
- the Environmental Health service (email [environmental.health@orkney.gov.uk](mailto:environmental.health@orkney.gov.uk) or telephone 01856 873535 extension 2801).

### 5.1. Provisional Premises Licences

Where the application is for the grant of a provisional premises licence it need only be accompanied by a certificate under section 50 of the Act in relation to Planning.

## 6. Layout Plans

Applications for premises licences must be accompanied by layout plans. These should be provided as PDFs via email, together with 3 printouts to scale. If an electronic copy of the plans is not available, 7 printouts to scale must be provided.

### **The Premises Licences (Scotland) Regulations 2007 (SSI 2007/452).**

A layout plan must show the following:

- the extent and dimensions of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter and dimensions of the premises to be licensed (including outside drinking areas);
- the location and names of any streets surrounding the premises from which members of the public have access to the premises;
- the location and width of each point of access to and egress from the premises;
- the location and width of any other escape routes from the premises;
- the location of any equipment used for the detection or warning of fire or smoke or for fighting fires;
- the location of any steps, stairs, elevators or lifts on the premises;
- the location of any toilets on the premises (identified as male, female or disabled as appropriate);

- any area on the premises set aside specifically for the use of children and young persons; and
- any area on the premises to which children and young persons will have access.

Where the layout plan relates to premises to be licensed for the sale of alcohol for consumption **on** the premises, it must also show the use or uses to which each part of the premises will be put (under reference to the activities identified in the operating plan).

Where the layout plan relates to premises to be licensed for the sale of alcohol for consumption **off** the premises, it must also show the following:

- the location of the area or areas to be primarily used for the display of alcohol;
- the maximum width and height (in metres) of the frontage to be used for the display of alcohol within that area or those areas; and
- the maximum linear measurement (in metres) of any displays of alcohol outside the frontage referred to at the bullet point above.

A layout plan may include a legend through which the matters narrated above may be sufficiently illustrated by the use of symbols on the plan.

Layout plans must be in the following format:

- **All applications:** professionally prepared premises drawings at a scale of 1:100 and a location plan at a scale of 1:1250.
- **Complex applications**, identified by the Clerk in consultation with licensing and local authority officers: professionally prepared premises drawings at a scale of 1:50.

**Mandatory Premises Licence Condition Number 13 – Display, or promotion of the sale, of alcohol for consumption off the premises.**

There are additional requirements affecting layout plans for off-sales premises in terms of the 2005 Act as amended by:

- the Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007 (SSI 2007/546),
- the Licensing (Mandatory Conditions) (Scotland) Regulations 2009 (SSI 2009/270),
- the Alcohol etc. (Scotland) Act 2012:

(1)	Subject to sub-paragraph (3), alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following:
(a)	a single area of the premises agreed between the Licensing Board and the holder of the licence; or
(b)	a single area of the premises which is inaccessible to the public.

(1A)	Sub-paragraphs (1B) to (1D) apply where the premises, in so far as they are used for the sale of alcohol, are so used only or primarily for the sale of alcohol for consumption off the premises.
(1B)	Any drinks promotion on the premises may take place only in any one or more of the following:
(a)	an area referred to in sub-paragraph (1)(a) and (b),
(b)	a room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the premises) and the resulting tasting and is separate from those areas.
(1C)	A drinks promotion in connection with the premises may not take place in the vicinity of the premises.
(1D)	For the purposes of sub-paragraph (1C), the “vicinity” means the area extending 200 metres from the boundary of the premises (as shown on the layout plan).
(2)	In an area agreed in terms of sub-paragraph (1)(a), a product other than alcohol may be displayed only if it is:
(a)	a non-alcoholic drink,
(b)	packaged with, and may be purchased only along with, alcohol,
(c)	a branded non-alcoholic product, or
(d)	a newspaper, magazine or other publication.
(3)	This paragraph does not apply in respect of premises:
(a)	whose main function is to provide a visitor attraction, and
(b)	where:
(i)	the premises form part of a larger site which is used principally for the production of alcoholic drinks, or
(ii)	the visitor attraction is used principally to provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.
(4)	In this paragraph:
	<p>“branded non-alcoholic product” means a product which does not consist of or contain alcohol and which:</p> <ul style="list-style-type: none"> <li>• bears a name or image of, or</li> <li>• is an image of,</li> </ul> <p>an alcoholic product (namely, a product consisting of or containing alcohol),</p>

“drinks promotion” means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises but does not include the display of any product which is:

- a branded non-alcoholic product for sale on the premises, or
- a newspaper, magazine or other publication:
  - for sale on the premises, or
  - if not for sale on the premises, which does not relate only or primarily to alcohol.

## **7. Display of Notices and Confirmation of Site Notice**

Applicants must display a form of Notice at the premises in a place and at a height where it can conveniently be read by the public. It must be displayed for a period of 21 days, but that period will only commence once the Board gives official public notice of the application. Applicants should consult closely with licensing staff for information on the 21 days period which will apply to their Notices.

When the 21 days period is over, applicants must submit a certificate of Confirmation of Site Notice to the Board.

## **8. Fire Safety Checklists**

The Board issues Fire Safety Checklists to all applicants for premises licences to help applicants to consider the steps which they should be taking under the Fire (Scotland) Act 2005 and to help to focus attention on fire safety matters when preparing application(s). The document should be completed and submitted to the Scottish Fire and Rescue Service at the address shown on the form.

The Checklist is available from the Related Downloads section of the following Council webpage:

[http://www.orkney.gov.uk/Service-Directory/L/Alcohol\\_Licensing.htm](http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm).

## **9. Application Fees**

Application fees are determined by licensing boards in accordance with the Licensing (Fees) (Scotland) Regulations 2007. At time of preparation of this Guidance, the Board's fees for initial premises licence applications and annual premises licence fees are as shown in the table below. Application fees are published on the following Council webpage:

[http://www.orkney.gov.uk/Service-Directory/L/Alcohol\\_Licensing.htm](http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm).



Category	Rateable Value of Premises Between £	Initial Fee £	Annual Fee £
1.	Premises which have no rateable value, clubs and certain other premises (see below).	200.00	180.00
2.	1 and 11,500	800.00	220.00
3.	11,501 and 35,000	1100.00	280.00
4.	35,001 and 70,000	1300.00	500.00
5.	70,001 and 140,000	1700.00	700.00
6.	Over 140,000	2000.00	900.00

Category 1 premises:

- are not entered on the valuation roll or there is no rateable value or a nil value shown in respect of them of that roll;
- main function is to provide a visitor attraction and any sale of alcohol on the premises would:
  - not be consumed on the premises; and
  - is considered by the board as likely to be incidental to other activities carried out on the premises;
- are used wholly or mainly for the purposes of a club as described in the Licensing (Clubs) (Scotland) Regulations 2007; or
- 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.

The initial fee is payable on making the application, and the annual fee will be due on 1 October each year. When premises licences are first issued, a portion of the annual fee becomes due within 30 days of the date on which the premises licence took effect.

### **9.1. Provisional premises licences**

Provisional premises licences may be applied for where premises have yet to be, or are in the course of being, constructed or converted for use as licensed premises. Provisional premises licences do not come into effect until confirmed by the licensing board. They have an initial currency of 4 years, which may be extended in the event of a delay caused by factors outwith the licence holder's control. The licensing board may choose the period of extension.

The fee payable in respect of an application for a provisional premises licence is the fee which would be payable in relation to a premises application within category 1 referred to above.

The fee payable in respect of an application for confirmation of a provisional premises licence is  $(A - B)$ , where A is the amount payable in relation to premises applications within categories 1 to 6 referred to above and B is the amount already paid.

## **10. Application Forms and Operating Plans**

The application form and operating plan will be scanned for computer purposes and consequently should be completed in typescript or, if hand written, legibly in block capitals in **black** ink.

All writing should be contained within the boxes where these are provided.

Where Yes/No answers are required, the non-applicable answer should be clearly indicated by crossing out in **black** ink.

If the answers to the questions cannot be contained within the boxes provided, supplementary information should be provided on A4 sheets in typewritten or word processed text or written legibly in block capitals in **black** ink.

### **10.1. Age of Applicant**

Any person, provided they are 18 years of age or older, may apply to the appropriate licensing board for a premises licence in respect of any premises

### **10.2. Connected Persons**

Where the applicant is a partnership, company, club or other body, the names, dates and places of birth and home addresses of connected persons must be provided at question 2(e) on the application form.

Section 147(3) of the Act states that for the purposes of that Act, a person is, in relation to a partnership, a company, a club or other body (whether incorporated or unincorporated), a connected person if the person:

- in the case of a partnership, is a partner;
- in the case of a company:
  - is a director, or
  - has control of the company (this will include company secretaries – see below);
- in the case of a club, is an office bearer of the club;
- in any other case, is concerned in the management or control of the body.

A person is taken to have control of a company if:

- any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person's directions or instructions, or
- the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company (ss.147(4) of the Act).

### **10.3. Previous Applications**

Section 25 of the Act makes certain provisions regarding previous refusals of earlier applications for premises licences under the Act.

In broad terms, a licensing 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 this provision 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.

Where applicants or connected persons (refer to section 10.2 above) have had an earlier application or applications refused under the terms of the Act, details should be provided including the date(s) of earlier refusal(s), the premises to which the refusal(s) applied and the name of the licensing board.

### **10.4. Previous Convictions**

This question pertains to whether or not the applicant or any connected person (refer to section 10.2 above) has ever been convicted of a relevant or foreign offence. Delete Yes or No. Where the answer is Yes details should be provided, including name and position, date of conviction or sentence, court, nature of crime or offence and sentence.

"Relevant offences" are prescribed by the Licensing (Relevant Offences) (Scotland) Regulations 2007. For the purposes of the Act, a conviction for a relevant offence or foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 and should not be provided. Foreign offence is defined in section 129 of the Act as meaning any offence under the law of any place other than Scotland and which is similar in nature to any relevant offence.

### **10.5. Members Clubs: Constitutions and Rules**

The constitution and rules of members' clubs are set out in regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007. Clubs are:

- not to be conducted for the purpose of making a profit; and
- are to have a written constitution and rules which make provision to the following effect:

- (a) the business of the club is to be under the management of a committee or other governing body elected by the members of the club;
- (b) no person under 18 is to be admitted as a member of the club (unless the club is devoted primarily to some sporting purpose or is a students' union);
- (c) no member of the committee or other governing body and no person employed by the club is to have any personal interest in the sale of alcohol on the club premises or in the profits arising from such sale;
- (d) other than when an occasional licence has effect, no person is to be supplied with alcohol on the club premises unless that person is:
  - (1) a member of the club;
  - (2) a person who is on the premises at the invitation of a member of the club and is accompanied by that member; or
  - (3) a member of another club which falls within the general description prescribed at the start of this paragraph;
- (e) where a person referred to at (d)(2) is supplied with alcohol on club premises when an occasional licence is not in effect, there is to be entered in a book kept for the purpose:
  - the date in question;
  - the name and address of the person; and
  - the name of the member accompanying the person;
- (f) correct accounts and books are to be kept showing the financial affairs and intromissions of the club;
- (g) the club has to have at least 25 members to be properly constituted; and
- (h) no person is to be allowed honorary or temporary membership of the club or to be relieved of the payment of the regular entrance fee or subscription:
  - except to allow temporary participation in the activity which is the prime purpose of the club; and
  - except in accordance with specific provision set out in the club rules.

Applicants must declare on the application form whether the club's constitution and rules comply with the Regulations by deleting Yes or No.

## **10.6. Operating Plans**

The operating plan forms part of the application for a premises licence. Applicants will need to be specific regarding how they plan to operate the premises to ensure that any subsequent operation or activity is covered by the premises licence. Compliance with the operating plan is a condition of the Act and any premises licence.

### **10.6.1. Operating Hours**

Applicants should note that alcohol cannot be supplied for off-consumption earlier than 10:00 or later than 22:00 in terms of the Act.

Information about the Board's Policy regarding on-sale operating hours is included in the Statement of Alcohol Licensing Policy.

### **10.6.2. Activities and Suitability of Premises**

This question deals with other activities or services which may be provided in addition to the sale of alcohol during and outwith those core hours when alcohol will be sold. Applicants should indicate what activities or services they intend providing by deleting Yes or No in each of the categories given.

When completing this section applicants should have regard to the terms of section 23(5)(d) of the Act, which examines the suitability of the premises for the purposes of the nature of activities being proposed and provides that boards must refuse applications if they find that, having regard to:

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

the board considers that the premises are unsuitable for use for the sale of alcohol.

### **10.6.3. Children and Young Persons**

For the purpose of the Act, a "child" means a person under the age of 16 years and a "young person" means a person aged 16 or 17 years.

### **10.6.4. Capacities**

Applicants are asked to provide an estimate of the proposed capacity of the premises they wish to be licensed. Any figure provided will be verified, for the purposes of overprovision, by the Board.

For the purposes of the overprovision assessment, capacity of licensed premises will be checked by local authority building standards officers. It must be stressed that any capacity figure that is determined will only be used for the purposes of overprovision under the Act and for no other purposes.

Under section 147 of the Act, "capacity" in relation to licensed premises means:

- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time; and
- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale. Measurements should be described as length and height of display areas, in metres, to enable a square metre calculation to be made.

## 11. Personal Licences and Premises Managers

Premises must have a named premises manager, whose details will be given in the premises licence. A premises manager must be a personal licence holder. A named premises manager cannot be the premises manager for more than one premises at a time.

Each premises can have more than one personal licence holder and this would be advisable to allow for events such as holidays, illness, etc. An applicant for a personal licence must be in possession of the prescribed licensing qualification.

An application for a Personal Licence must be accompanied by:

- evidence that the applicant possesses the prescribed training qualification; and
- two (2) photographs of the applicant.

The photographs must:

- measure 45 mm x 35 mm;
- be on photographic paper;
- be taken against a light background; and
- show the full face of the applicant, without the applicant wearing sunglasses or any head covering (unless the applicant wears such a covering on account of a religious belief).

One photograph must have on the back of it a statement by a person of standing in the community\*, with the words "I certify that this is a true likeness of (name of applicant)", followed by the full name of the person endorsing the photograph. That person should also indicate in which capacity they are signing e.g. accountant, JP, etc.

At time of preparation of this Guidance, the fee for an application for a personal licence is £50. The application form and fees are published on the following Council webpage:

[http://www.orkney.gov.uk/Service-Directory/L/Alcohol\\_Licensing.htm](http://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm).

An individual may not, at any one time, be the manager of more than one licensed premises. Accordingly, if an individual who is the premises manager of licensed premises is subsequently specified in the premises licence of other licensed premises as the manager of those other premises, the subsequent specification is of no effect.

Where the application is for the grant of a provisional premises licence there is no requirement to name a premises manager.

## **12. Status of this Guidance**

Please note that this guidance is not intended to provide a full, comprehensive or exhaustive summary of the law relating to licensed premises. Board staff will seek to clarify general advice where appropriate, but applicants may require to seek independent legal advice on any particular question.

## **13. Application and Plan Checking Service**

Applications for premises licences which do not meet the statutory criteria cannot be processed.

To help to minimise such problems, the Board's Licensing Team are happy to check applications prior to submission and can also help to have plans checked before copies are made and submitted.

Plans can be submitted by email or in paper form and the Licensing Team will consult with the Building Standards Service, Orkney Islands Council, before providing comments on plans.

Applications can be submitted by email for checking. If applicants would like to meet with a member of the Licensing Team, it is essential that s/he makes an appointment in advance, via telephone or email.

### **13.1. Contact Details**

The Licensing Team can be contacted as follows:

- by email to [licensing@orkney.gov.uk](mailto:licensing@orkney.gov.uk)
- by telephone to 01856 873535 extensions 2229 or 2232
- by letter to The Clerk to the Licensing Board, Orkney Islands Council Offices, Kirkwall, Orkney KW15 1NY.

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