

VARIATION OF PREMISES LICENCE

(Extract from The Act)

29. Application to vary premises licence

- (1) A premises licence holder may apply to the appropriate Licensing Board for a variation of the licence.
- (2) An application under subsection (1) must be accompanied by—
 - (a) the premises licence to which the application relates, or
 - (b) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (3) An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence variation application”.
- (4) Sections 21(1) and (2) and 22 apply in relation to a premises licence variation application (other than one in which the only variation sought is a minor variation) as they apply to a premises licence application.
- (5) In this Act, “variation”, in relation to a premises licence, means any variation of –
 - (a) any of the conditions to which the licence is subject (other than those to which the licence is subject by virtue of section 27(1)),
 - (b) any of the information contained in the operating plan contained in the licence,
 - (c) the layout plan contained in the licence, or
 - (d) any other information contained or referred to in the licence, and includes an addition, deletion or other modification.

- (6) In this Act, “minor variation” means—
- (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
 - (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,
 - (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
 - (d) any other variation of such description as may be prescribed for the purposes of this subsection.

30. Determination of application for variation

- (1) A premises licence variation application received by a Licensing Board is to be determined by the Board in accordance with this section.
- (2) If the variation sought is a minor variation, the Board must grant the application.
- (3) In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (4) Where a hearing is held under subsection (3), the Board must consider whether any of the grounds for refusal applies and—
 - (a) if none of them applies, the Board must grant the application,
 - (b) if any of them applies, the Board must refuse the application.

(5) The grounds for refusal are –

- (a) that the application must be refused under section 32(2), 64(2) or 65(3),
- (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
- (c) that, having regard to –

- (i) the nature of the activities carried on or 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 in accordance with the proposed variation,

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

- (i) licensed premises, or
- (ii) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation),

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.

(6) Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

(7) Where the Licensing Board refuses the application—

- (a) the Board must specify the ground for refusal, and
- (b) if the ground for refusal is that specified in subsection (5)(b), the Board must specify the licensing objective or objectives in question.

- (8) In subsection (5)(d), references to “licensed premises” do not include references to licensed premises in respect of which an occasional licence has effect.

31. Variation to substitute new premises manager

- (1) This section applies in relation to a premises licence variation application where –
- (a) the variation sought is the substitution of another individual as the premises manager, and
 - (b) the applicant requests in the application that the variation should have immediate effect.
- (2) Where this section applies, the premises licence to which the application relates has effect during the application period as if it were varied as proposed in the application.
- (3) In subsection (2), “the application period” means the period—
- (a) beginning when the application is received by the Licensing Board, and
 - (b) ending –
 - (i) when the variation takes effect, or
 - (ii) if the application is withdrawn before it is determined, when it is withdrawn.

32. Further application after refusal of application for variation

- (1) Subsection (2) applies where a Licensing Board has refused a premises licence variation application (such a refusal being referred to in this section as the “earlier refusal”).

- (2) Subject to subsection (3), the Board must refuse any subsequent premises licence variation application –
 - (a) in respect of the same premises licence, and
 - (b) seeking the same variation,made before the expiry of the period of one year beginning with the date of the earlier refusal.
- (3) Subsection (2) does not apply in relation to any subsequent application made during that period if –
 - (a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or
 - (b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

TRANSFER OF PREMISES LICENCE

33. Transfer on application of licence holder

- (1) A premises licence holder may apply to the appropriate Licensing Board for the transfer of the licence to such person as is specified in the application (such person being referred to in this section as the “transferee”).
- (2) The transferee may not be an individual under the age of 18.
- (3) An application under subsection (1) must be accompanied by –
 - (a) the premises licence to which the application relates, or
 - (b) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (4) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.

- (5) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (4), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (6).
- (6) Those notices are –
- (a) a notice stating that neither –
- (i) the transferee, nor
- (ii) where the transferee is neither an individual nor a council, any connected person,
- has been convicted of any relevant offence or foreign offence, or
- (b) a notice specifying any convictions of –
- (i) the transferee, and
- (ii) where the transferee is neither an individual nor a council, any connected person,
- for a relevant offence or a foreign offence.
- (7) Where the appropriate chief constable –
- (a) proposes to give a notice under subsection (6)(b), and
- (b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application for transfer of the licence to the transferee be refused,
- the chief constable may include in the notice a recommendation to that effect.
- (8) Where the Licensing Board receives a notice under subsection (6)(a) in relation to an application under subsection (1), the Board must grant the application.
- (9) Where the Licensing Board receives a notice under subsection (6)(b) in relation to an application under subsection (1), the Board must hold a hearing for the purpose of considering and determining the application.
- (10) Where a hearing is held under subsection (9), the Licensing Board must, having regard to the chief constable's notice –

- (10) (a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or
- (b) if not so satisfied, grant the application.

34. Transfer on application of person other than licence holder

- (1) A person other than –
- (a) the holder of a premises licence, or
- (b) an individual under the age of 18,
- (being a person of a prescribed description) may, within 28 days of the occurrence of any of the events specified in subsection (3), apply to the appropriate Licensing Board for the transfer to that person of the licence.
- (2) An application under subsection (1) must be accompanied by –
- (a) the premises licence to which the application relates, or
- (b) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (3) The events referred to in subsection (1) are –
- (a) the premises licence holder, being an individual –
- (i) dies, or
- (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
- (b) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
- (c) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
- (d) the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

- (4) Subsections (4) to (10) of section 33 apply for the purposes of an application under subsection (1) of this section as they apply for the purposes of an application under subsection (1) of that section, but as if references in them to the transferee were references to the applicant in relation to the application under subsection (1) of this section.
- (5) Subsections (7) and (8) of section 28 apply for the purposes of subsection (3)(b) of this section as they apply for the purposes of subsection (5)(d) of that section.

35. Variation on transfer

- (1) A person making an application to a Licensing Board under section 33(1) or 34(1) for transfer of a premises licence may also make an application to the Board for a variation of the licence.
- (2) Sections 29 and 30 apply in relation to an application under subsection (1) for a variation as they apply to a premises licence variation application.
- (3) Where –
 - (a) an application is made under subsection (1), and
 - (b) the applicant intimates to the Licensing Board that the application under section 33(1) or 34(1) for transfer of the premises licence is contingent on the grant of the application under subsection (1),the Licensing Board must determine the application under subsection (1) before determining the application for the transfer of the licence.
- (4) In such a case, if the Licensing Board refuses the application under subsection (1), the application for the transfer of the licence falls.
- (5) In any other case where an application under subsection (1) is made –
 - (a) the Licensing Board must first determine the application for transfer of the licence before determining the application under subsection (1), and
 - (b) if the application for the transfer of the licence is refused, the application under subsection (1) falls.