

THE LICENSING (SCOTLAND) ACT 2005 AND CLUBS

Introduction

At present clubs are registered with the Sheriff Court if they wish to sell or supply alcohol (under Part VII of the Licensing (Scotland) Act 1976).

The Licensing (Scotland) Act 2005 will change this. Clubs will come under the remit of their local Licensing Board. Under the Licensing (Scotland) Act 2005 clubs will be subject to much of the same regulation as other licensed premises. For example the Council's Licensing Standards Officer will have statutory power to enter licensed premises, including club premises, for the purposes of inspection and examination of records.

Any club which wishes to continue to sell or supply alcohol after 1st September 2009 will need to apply for the new form of premises licence.

When will the changes happen?

The changes start on 1st February 2008 and from that date applicants can start applying for their new premises licences. The Licensing (Scotland) Act 2005 comes into full force on 1st September 2009 and new licences will not take effect until that date. The period from 1st February 2008 until 1st September 2009 is called the "transition period"

It is for each Licensing Board to decide when the deadline for applications from clubs will be. Perth and Kinross Licensing Board has decided that applications will be accepted from **1st November 2008 until 19th December 2008**. If your application is granted you will then be able to continue to sell or supply alcohol after 1st September 2009.

How do Clubs Get a Licence?

From 1st February 2008 your existing permissions (i.e. registrations plus any regular extensions) will automatically continue until 1st September 2009. They will not need to be renewed during that time, even if they would be due for renewal at some point in this period.

Between 1st February 2008 and 1st September 2009 all clubs will have to apply for a new premises licence from Perth and Kinross Licensing Board (as well as any personal licences – see below).

Application forms are available on the Council's website, www.perthshire.com or on request from the Licensing Team, Legal Services, Perth and Kinross Council, 2, High Street, Perth. PH1 5PH

You will be sent a reminder in October 2008.

Which rules will Clubs have to comply with?

The main legal requirement is that a club will have to hold a premises licence in the name of the club or the committee/governing body if they wish to sell or supply alcohol.

The Act also allows for some exemption from some parts of the legislation for clubs which meet certain statutory requirements. The Licensing (Clubs) (Scotland) Regulations 2007 set out the requirements clubs must meet to benefit from the exemption. Clubs which meet these requirements are called “qualifying clubs”.

When will a Club be treated as exempt?

For a Club to be treated as exempt, the following requirements must be met:

The Club

- must **not** be conducted for the purposes of making a profit; and
- must have a written constitution and rules that provide for the following:
 - the business of the club is to be under the management of a committee or other governing body elected by the members;
 - 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;
 - no member of the committee or governing body and no employee is to have any personal interest in the sale of alcohol on the club premises or in the profits from the sale of alcohol;
 - except when an occasional licence is in force alcohol can only be **supplied** to
 - members,
 - a person on the premises at the invitation of a member and accompanied by that member,
 - a member of another qualifying club*(NB Note here that reference is to supply not sale so it is not possible for members to buy for others who do not qualify for one of these categories.)*
- other than when an occasional licence is in force, where a guest is supplied with alcohol entry must be made in a book to record the date and the names of the accompanying member and guest. This record should be available for inspection;
- correct accounts and books are to be kept showing the financial affairs of the club;
- the club must have at least 25 members to be properly constituted;
- there can be no honorary or temporary membership or relief from payment of fees (entrance 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;

Please note that as a qualifying club must have a proper constitution to comply with the Regulations the Licensing Board will be looking to clubs to provide a copy of their constitution with their application.

What are the Exemptions for Qualifying Clubs?

The Act provides for exemptions from parts of the Act for qualifying clubs who meet the requirements set out above.

Qualifying clubs are exempt from:

- the assessment of overprovision
- refusal of the application for a premises licence on the grounds of overprovision
- the requirement for there to be a premises manager for licensed premises (note that Clubs are not required to have (but may choose to have) a premises manager and/or one or more personal licence holders. Where a club chooses to name a premises manager then he/she must be a personal licence holder and the application for that personal licence must be made at the same time as the application for a premises licence).
- the requirement for the operating plan to contain information as to the premises manager
- the requirement for name and address of premises manager to be specified in premises licence
- the requirement for sales of alcohol under premises licence to be authorised by a personal licence holder
- the requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder

These exemptions mean that qualifying clubs will not generally need a personal licence holder or a premises manager. Clubs should note that where they are open after 1.00am on any occasion, they will become subject to a mandatory condition on their licence which will require them to have a personal licence holder on the premises after that time. Clubs in this situation should discuss this with licensing staff.

Can Clubs still apply for Occasional Licences?

Qualifying clubs can apply under the Act for occasional licences in respect of their own premises. The Board will provide further information in relation to occasional licences, but the position for clubs is as follows:

In any period of 12 months the Board may issue–

- (a) not more than 4 occasional licenses each having effect for a period of 4 days or more, and
- (b) not more than 12 occasional licences each having effect for a period of less than 4 days,

provided that, in any period of 12 months, the total number of days does not exceed 56.

Therefore, up to 56 days a year can be covered by occasional licences where the club will be able to admit and sell or serve alcohol to members of the general public, as well as members and guests. During those times, there will be no requirement for alcohol sales to be authorised by a personal licence holder, no requirement to sign in guests and other premises licence conditions will be suspended. An occasional licence may be appropriate for a function held on the club premises to which the general public are admitted.