



**SCOTTISH BORDERS LICENSING
BOARD
TO BE HELD ON
FRIDAY, 21ST JUNE, 2019**

**Please find attached additional items for the agenda for
the above meeting**

8.	Licensing (Scotland) Act 2005: Section 72 - Applications for Grant of Personal Licence (Applicants cited to attend) (Pages 3 - 4) (ii) Hearing to consider application following confirmation from Police Scotland of conviction(s) for a relevant offence(s). (Copy statement attached)
10.	Any other items which the Convener decides are Urgent (Pages 5 - 22) Scottish Government Consultation Paper on Occasional Licenses. (Copy attached)

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Briefing Note

Scottish Borders Licensing Board

Friday 21 June 2019

The purpose of this note is to brief Members with regard to the ongoing Scottish Government consultation on Occasional Licences and the nature of the response which Licensing Officers propose to make on behalf of the Board.

The consultation is due to close on 16 July 2019.

A copy of the consultation is attached and broadly forms a series of questions which can be broken down into two parts namely the level of fee to be charged for an Occasional Licence Application and whether a limit should be placed on the number and duration of Occasional Licences which can be applied for by holders of a Premises Licence or a Personal Licence.

With regard to the fees, the current fee payable for an Occasional Licence is £10 and this fee has been in place for a considerable period of time. The consultation asks if the Board agrees that this fee should be increased and then asks if a new fee of either £50, £75 or £100 would be an appropriate new fee level. In addition the consultation also invites suggestions for a suitable fee level in the event that none of the fees suggested in the consultation is deemed appropriate.

It is the view of Licensing Officers that the current level of £10 is too low and does not cover the average administration costs incurred in processing such applications. Based on their practical experience of dealing with occasional licence applications on a day to day basis, it is the view of Licensing Officers that a new fee level of at least £50 would be appropriate as this amount would more realistically cover the administration costs which are incurred in processing these applications. That said there is a distinction to be made between occasional licence applications made by the holders of a Premises or Personal Licence and those made by voluntary organisations. During the year 1 April 2018 to 31 March 2019, the Board issued 1356 Occasional Licences of which 384 were issued to voluntary organisations. As voluntary organisations mostly apply for occasional licences to accompany fund raising events as opposed to being a profit making organisation then it may be more appropriate to introduce a tiered fee structure whereby a lesser fee is charged to voluntary organisations. If members found that to be preferable then Licensing Officers would suggest an increased fee of £30 would be appropriate for applications made by voluntary organisations with a fee of £75 being charged for applications made by holders of a Premises or Personal Licence.

The second part of the consultation covers the possibility of placing a limit on the number and duration of occasional licence applications which can be made by holders of premises and personal licences. Currently there is no limit on the number of such applications which can be made by the holders of premises or personal licences.

There are already restrictions on the number of applications a voluntary organisation/members club can make in any period of 12 months.

- Not more than 4 occasional licenses each having effect for a period of 4 days or more; and
- Not more than 12 occasional licenses each having effect for a period of less than 4 days.

Provided that, in any period of 12 months, the total number of days on which occasional licenses issued in respect of the voluntary organisation/registered club have effect does not exceed 56 days.

Having regard to the Board's Policy Statement and the licensing objectives the Licensing Officers do not consider there are any justifiable reasons for imposing any such limit on premises licences and personal licence holders, as in the Board's area multiple licence applications are applied for by holders of premises/personal licences whose business relies heavily or operates solely as outside caterers often using unlicensed community venues for various social gatherings, such as weddings and community events.

Licensing Officers therefore recommend that Members endorse the proposed response to the consultation on behalf of the Board as set out above.

Ron Kirk
Managing Solicitor – Property and Licencing
Legal Services

Licensing (Scotland) Act 2005

Consultation on reviewing the fee for occasional licences and considering a limit on the number and duration of occasional licences



Background

1. Alcohol licensing in Scotland is principally regulated by the Licensing (Scotland) Act 2005 ('the 2005 Act') and secondary legislation made under that Act.
2. The operation of the alcohol licensing system is the responsibility of Licensing Boards. Licensing Boards are independent regulatory bodies and their activities are governed by the 2005 Act. Councils elect members from among their councillors to form the Licensing Board(s) for their local authority area, and Boards receive support from local authority staff. However, a Licensing Board is an entirely separate legal entity from a local authority.
3. Licensing Boards are primarily responsible for regulating the sale of alcohol to the public within their particular area. The Boards carry out a range of functions, including granting and reviewing licences to sell alcohol.
4. The Scottish Ministers have powers under the 2005 Act to make secondary legislation in relation to alcohol licensing. For instance, in relation to the procedure that Licensing Boards and applicants are to follow, or as to fees.
5. This consultation relates to the 'occasional licence'. An occasional licence allows unlicensed premises to sell alcohol. Licensing Boards are responsible for issuing occasional licences.

The occasional licence

6. The purpose of the occasional licence is to cater for the multitude of events which take place on premises which are not 'fully' licensed but feature the sale of alcohol, for example fetes, wedding receptions and arts events. When used in their envisaged role, occasional licences offer a flexible regime for the hospitality and entertainment sector to provide alcohol at events outside licensed premises.
7. However, concerns have also been raised that some applicants have sought to use the occasional licence process to apply for consecutive occasional licences as an alternative to a full premises licence, allowing them to circumvent parts of the licensing regime.
8. The procedures for handling occasional licences are set out in sections 56 to 61 of the 2005 Act. Those persons eligible to apply for an occasional licence are:
 - The holder of a premises licence;
 - The holder of a personal licence; and
 - A representative of any voluntary organisation.
9. Occasional licences are subject to mandatory national licensing conditions set out in schedule 4 to the 2005 Act.

10. Voluntary organisations may apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation's activities. A single voluntary organisation may hold over a 12 month period:
 - Not more than 4 occasional licences of 4 days or more in duration;
 - Not more than 12 occasional licences of less than 4 days in duration
11. However the total number of days on which an occasional licence has effect must not exceed 56 during any 12 month period.
12. Occasional licences may be given in respect of a premises licence covering a members' club. This means, for example that a members' club which under its licence is normally only permitted to supply alcohol to its members and their guests may during the period covered by an occasional licence admit members of the public and sell alcohol to them.
13. The maximum duration of each occasional licence is 14 days.
14. Under the 2005 Act and [The Licensing \(Procedure\) \(Scotland\) Regulations 2007](#) (SSI 2007/453), applications for occasional licences are subject to a statutory procedure for notification, publication and determination. This is intended to ensure there is appropriate notification of applications and the ability to object and make representations.
15. Any application for an occasional licence is notified to the Chief Constable and Licensing Standards Officer (LSO), and anyone can lodge an objection.

Reviewing the fee for occasional licences

16. Section 56 of the 2005 Act and [The Occasional Licence \(Scotland\) Regulations 2007](#) (SSI 2007/96) set out the legislative process for applying for an occasional licence.
17. Section 136 of the 2005 Act enables Scottish Ministers to make provision for the charging of alcohol licensing fees by Licensing Boards in a range of situations such as applying for premises licences, personal licences and occasional licences; annual fees and transfers or variations of licences.
18. [The Licensing \(Fees\) \(Scotland\) Regulations 2007](#) (SSI 2007/553) were made in exercise of the powers conferred by the 2005 Act to provide for the fees to be charged by Licensing Boards in relation to various matters under the 2005 Act. In respect of some matters, Licensing Boards have discretion as to the fee that is to be charged. Regulation 13 of SSI 2007/553 sets out the procedure for determining certain fees where Licensing Boards have discretion as to the level of the fee:

13. In determining any fee under regulation 6(1), 8(1), 11(1) or 12(2), a Board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board, and the council for the area of that Board, in administering the Act generally during that period.'

19. However, Licensing Boards have no discretion in respect of the occasional licence fee. Regulation 15 of SSI 2007/553 set the occasional licence fee at £10 for all applicants:

15. The fee payable in respect of an application under section 56(1) of the Act is £10.'

20. The [Review of Alcohol Licencing Fees](#) report published in February 2014 made a number of recommendations to Scottish Ministers. One of which was that the fee for occasional licences should be raised higher than the current £10 level.

21. The steering group set up to review fees reported that the occasional applications were overall the most labour-intensive activity for Licensing Boards, who spent between 5 and 50% of their total activity on these applications. Although many occasional applications require relatively little work, some are much more complex and labour intensive and the £10 fee does not cover the associated costs.

22. Furthermore, there are a large number of these compared to other applications. The feedback received from the steering group was clear that the £10 occasional licence fee was not sufficient to cover the cost of administration.

23. Having considered the above, the Scottish Government believes that there is a case for increasing the fee from the current level of £10.

24. Increasing the fee requires a change to regulation 15 of SSI 2007/553.

25. The Scottish Government is also required to consult before any new fees system comes into force. We are therefore now consulting on whether or not to raise the fee for an occasional licence from the current price of £10, to either £50, £75 or £100. We also welcome views on alternative fee levels

26. In addition to welcoming views from respondents to the consultation on whether or not the fee level for the occasional licence should be increased, we also welcome evidence to support their view.

Prescribing a limit on the number and duration of occasional licences

27. As well as consulting on whether or not to increase the fee level for the occasional licence, we are also consulting on prescribing a limit on the number and duration of occasional licences for holders of a premises licence and holders of a personal licence.

28. Section 56 of the 2005 Act was amended by [section 13 of the Alcohol etc. \(Scotland\) Act 2010](#) ('the 2010 Act) to provide Scottish Ministers with a power to make Regulations limiting when a Licensing Board may issue an occasional licence.

29. Section 13 of the 2010 Act was commenced on 1 October 2011. However, Regulations setting limits have not yet been made for holders of a premises licence and holders of a personal licence. We are therefore now seeking views on whether to prescribe limits, and if so, what they should be. At present there are no restrictions on the number of occasional licences that may be granted to a premises licence holder or a personal licence holder.

30. The power to make Regulations includes the ability to:

- set out limits on the number of occasional licences that could be issued to the same applicant in a 12 month period,
- set out limits on the number of occasional licences that could be issued in relation to the same premises in a 12 month period,
- set out limits on the number of days that the occasional licences issued to the same applicant in a 12 month period could have effect,
- set out limits on the number of days that the occasional licences issued in relation to the same premises in a 12 month period could have effect, and
- can also set out limits on the number of continuous days that a series of occasional licences can have effect in relation to the same premises.

Purpose of consultation

31. The purpose of this consultation is therefore:

- To consult on whether or not to raise the fee for an occasional licence from the current price of £10, and if it is agreed that we should increase the fee, seek views on what that new fee level should be; and
- seek views on prescribing a limit on the number and duration of occasional licences for premises licence holders and personal licence holders.

32. In terms of next steps following this consultation, the Scottish Government will analyse the responses and if considered appropriate will draft and lay secondary legislation embedding any new fee level or limit on the number and duration of occasional licences into Scottish law.

Consultation Questions:

(We would be grateful if you would use the consultation questionnaire provided at Annex C)

Fees

1. Do you agree that the fee for an occasional licence should be increased from the current level of £10?

Yes / No

2. Why?

3. Do you agree that £50 is an appropriate new fee level?

Yes / No

4. Why?

5. Do you agree that £75 is an appropriate new fee level?

Yes / No

6. Why?

7. Do you agree that £100 is an appropriate new fee level?

Yes / No

8. Why?

9. If you do not think that any of the proposed fee levels are appropriate, what do you believe would be a suitable fee level?

10. What evidence, based on cost recovery, can you supply for an appropriate fee level for occasional licences?

Limits

11. Do you agree that limits should be placed on the number and duration of occasional licences for holders of a premises licence and holders of a personal licence?

Yes / No

12. Why?

13. What do you think would be an appropriate limit on the **number** of occasional licences that could be issued to the same **applicant** in a 12 month period, and why?

14. What do you think would be an appropriate limit on the **number** of occasional licences that could be issued to the **same premises** in a 12 month period, and why?

15. What do you think would be an appropriate limit on the **number of days** that occasional licences issued to the **same applicant** in a 12 month period could have effect, and why?

16. What do you think would be an appropriate limit on the **number of days** that the occasional licences issued in relation to the **same premises** in a 12 month period could have effect?

17. What do you think would be an appropriate limit on the **number of continuous days** that a series of occasional licences can have effect in relation to the **same premises**?

18. Are there any other comments you wish to make that relate to the occasional licence?

ANNEX A

Responding to this Consultation

We are inviting responses to this consultation by Tuesday 16 July 2019

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/criminal-law/occasional-licences>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Tuesday 16 July 2019.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:
licensing.consultation@gov.scot

or

Adam Sinclair
Licensing Team
Area GW14
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

If you have any queries contact Adam Sinclair on 0131 244 7931.

We would be grateful if you would use the consultation questionnaire provided (at Annex C) or could clearly indicate in your response which questions you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: <http://consult.scotland.gov.uk>.

The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached at Annex B included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Adam Sinclair at the above address.

Scottish Government consultation process

Consultation is an essential part the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

ANNEX B

The Licensing (Scotland) Act 2005 – Consultation on reviewing the fee for occasional licences and considering a limit on the number and duration of occasional licences

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response. To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes No

ANNEX C
Questions:

Fees

1. Do you agree that the fee for an occasional licence should be increased from the current level of £10?

Yes No

2. Why?

Comments

3. Do you agree that £50 is an appropriate new fee level?

Yes No

4. Why?

Comments

5. Do you agree that £75 is an appropriate new fee level?

Yes No

6. Why?

Comments

7. Do you agree that £100 is an appropriate new fee level?

Yes No

8. Why?

Comments

9. If you do not think that any of the proposed fee levels are appropriate, what do you believe would be a suitable fee level?

Comments

10. What evidence, based on cost recovery, can you supply for an appropriate fee level for occasional licences?

Comments

Limits

11. Do you agree that limits should be placed on the number and duration of occasional licences for holders of a premises licence and holders of a personal licence?

Yes No

12. Why?

Comments

13. What do you think would be an appropriate limit on the **number** of occasional licences that could be issued to the same **applicant** in a 12 month period, and why?

Comments

14. What do you think would be an appropriate limit on the **number** of occasional licences that could be issued to the **same premises** in a 12 month period, and why?

Comments

15. What do you think would be an appropriate limit on the **number of days** that occasional licences issued to the **same applicant** in a 12 month period could have effect, and why?

Comments

16. What do you think would be an appropriate limit on the **number of days** that the occasional licences issued in relation to the **same premises** in a 12 month period could have effect?

Comments

17. What do you think would be an appropriate limit on the **number of continuous days** that a series of occasional licences can have effect in relation to the **same premises**?

Comments

18. Are there any other comments you wish to make that relate to the occasional licence?

Comments

ANNEX D

LIST OF CONSULTEES

Responses to this consultation are welcome from any individual or organisation with an interest.

The following will be sent a copy of the consultation directly:

All Scottish Local Authorities
All Scottish MEPs
Clerk of the Justice Committee of the Scottish Parliament
Clerk of the Local Government and Communities Committee of the Scottish Parliament
Consumer Focus Scotland
COSLA (Convention of Scottish Local Authorities)
Equality and Human Rights Commission
Federation of Small Businesses
Law Society of Scotland
Police Scotland
Scottish Crime and Drug Enforcement Agency
Scottish Government Library
Scottish Human Rights Commission
SOLAR (Society of Local Authority Lawyers and Administrators Scotland)
SPICe (Scottish Parliament Information Centre) library
The 6 Legal Deposit or 'Copyright' libraries

The consultation will also be sent to a number of individuals who have expressed an interest.



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