

APPENDIX 3 LEGAL TEST

<p style="text-align: center;">Licensing (Scotland) Act 2005 Part 3 & Sections 29-32 Application for Variation of a Premises Licence</p>

LEGAL TEST

The legal test is set out in Section 30 of the Act.

- (1) A premises licence variation application received by a Licensing Board is to be determined 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 purposes 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, or
 - (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)¹**
 - (b) **That the Licensing Board considers that the granting of the application would otherwise be inconsistent with one or more of the Licensing objectives.**
 - (c) **that, having regard to –**
 - (i) **the nature of the activities 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 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 the same or similar description as the subject premises (taking account of the variation) 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-**

¹ Section 32(2) - where a previous variation application has been refused by the Board and before the expiry of the period of one year beginning with the date of the earlier refusal;
Section 64(2) – where to grant the hours sought would result in alcohol being sold on the premises during a continuous period of 24 hours or more, unless the Board is satisfied that there are exceptional circumstances to justify a grant; and
Section 65(3) that the hours for off sales would be before 10.00a.m. after 10.00p.m. or both

- (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.

1. Section 4 of the Scottish Government's Statutory Guidance to Licensing Authorities relates to premises licences. The Board should note that in terms of Section 142(4) of the Act, a Board deciding not to follow this guidance must give Ministers notice of that decision together with a statement of the reasons for it.