

APPENDIX 3

Licensing (Scotland) Act 2005 Section 36 - 40 Review of Premises Licences

LEGAL TEST

The grounds for review are set out at Section 36(3) and (4) of the Act.

- (3) The **grounds for review** referred to in subsection (1) are –
- (za) **that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence**
 - (a) **that one or more of the conditions to which the premises licence is subject has been breached, or**
 - (b) **any other ground relevant to one or more of the licensing objectives.**
- (4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) **only if –**
- (a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under Section 14(2)(a)(i)¹, AND
 - (b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.

The legal test is set out in Section 39 of the Act.

- (1) At a review hearing in relation to any premises licence, the Licensing Board MAY, if SATISFIED that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the STEPS mentioned in subsection (2) as the Board considers **necessary or appropriate for the purposes of any of the licensing objectives.**
- (1A) Subsection (1) is subject to subsection (2A).
- (2) Those steps are –
- (a) **to issue a written warning to the licence holder**
 - (b) **to make a variation of the licence.**
 - (c) **to suspend the licence for such period as the Board may determine,**
 - (d) **to revoke the licence.**
- (2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in Section 36(3)(za)² is established, the Board **MUST revoke** the licence.

¹ An enforcement notice

² That, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence.

- (2B) Subject to Section 39B³, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision
- (3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.

There are five licensing objectives which underpin the 2005 Act. These are:

- **Preventing crime and disorder**
- **Securing public safety**
- **Preventing public nuisance**
- **Protecting and improving public health, and**
- **Protecting children and young persons from harm.**

The Licensing Board's policy statement must promote these licensing objectives and sets out how the Board expects applicants to comply with and promote the objectives. The following parts of the policy are relevant to the consideration of applications for premises licences and provisional premises licences:

- Appendices 1 and 2 to the Main Policy Statement (Appendix 2 applies in North only)
- Supplementary Policy 3 – overprovision
- Supplementary Policy 4 – Operating Hours
- Supplementary Policy 6 – Licence Types and Board Procedures
- Supplementary Policy 7 - private members clubs
- Supplementary Policy 8 - petrol stations.

Premises Licence

1. In terms of Section 17 of the 2005 Act, a premises licence is required to authorise the sale of alcohol on premises.

There are two methods by which the Board can review a premises licence set out in terms of the Act.

Section 36 – Application for Review of a Premises licence

2. Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review. Such an application is referred to as a “premises licence review application”.
3. A premises licence review application must specify the alleged ground for review, including in particular –

³ Where a Licensing Board decides to recall a revocation of a premises licence imposed under S39(2A)

- (za) where the ground is that specified in Section 36(3)(za), a summary of the information on which the applicant's view that the alleged ground applies is based
 - (a) Where the ground is that specified in Section 36(3)(a), the condition or conditions alleged to have been breached
 - (b) Where the ground is that specified in Section 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.
4. A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to –
- (a) the licence holder
 - (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
 - (c) any person who is an interested party in relation to the licensed premises.
5. A Licensing Board may reject a premises licence review application if the Board considers the application –
- (a) is vexatious or frivolous, or
 - (b) does not disclose any matter relevant to any ground for review and MAY recover any expenses incurred by the Board in considering the application.

Section 37 – Review of a Premises Licence on the Licensing Board's Initiative

6. The appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review. Such a proposal is referred to as a "premises licence review proposal".
7. The grounds for review set out in Section 36(3) apply to a premises licence review proposal as they do to a premises licence review application.
8. The review proposal must specify the alleged grounds for review, including in particular
- (za) where the ground is that specified in Section 36(3)(za), a summary of the information on which the Board's view that the alleged ground applies is based
 - (a) Where the ground is that specified in Section 36(3)(a), the condition or conditions alleged to have been breached
 - (b) Where the ground is that specified in Section 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.
9. A licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to –

- (a) the licence holder
- (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
- (c) any person who is an interested party in relation to the licensed premises.

Review Hearing

10. Where a Licensing Board –

- (a) makes a premises licence review proposal, or
- (b) receives a premises licence review application

The Board **MUST** hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under Section 36(6). Such a hearing is referred to as a “review Hearing”

11. Where a review hearing is to be held, the Board **MUST** –

- (a) in the case of a premises licence review application, give notice of the hearing to the applicant, and
- (b) give notice of the hearing and a copy of the premises licence review proposal or application to –
 - (i) the licence holder, and
 - (ii) Any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.

12. The Licensing Board **MAY**, for the purposes of the review hearing –

- (a) obtain further information from such persons, and in such manner, as the Board thinks fit. And
- (b) take the information into account.

13. In particular, the Board may –

- (a) request –
 - (i) the attendance at the review hearing of any person for the purpose of providing information, and
 - (ii) the production at the review hearing by any person of any documents in that person’s possession or under that person’s control, and
- (b) take into account any information relevant to any ground for review event though it is not relevant to any circumstances alleged in the review proposal or application under consideration.

Conduct Inconsistent with the Licensing Objectives

14. Section 84 of the Act Applies where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding such as is mentioned in the following paragraph, in relation to any personal licence holder who is, or was, working in the licensed premises in respect of which the premises licence was issued.
15. The Board should hold a separate hearing in respect of personal licence holders as the finding and a hearing should take place can only be made after holding a hearing to review the premises licence. Any persons licence holders that may be affected by the premises licence review that are known to the Board, should be invited to attend the premises licence review hearing so that they are fully aware of the circumstances that they may be asked to address in respect of their conduct as personal licence holders.
16. The Board can make a finding that the personal licence holder concerned, while working as mentioned in the above paragraph, acted in a manner which was inconsistent with any of the licensing objectives.
17. The Licensing Board making the finding MUST –
 - (a) If the persons licence holder concerned is, at the time of the finding, working in licensed premises (whether the licensed premises concerned or other licensing premises) in that Board’s area, hold a hearing.
 - (b) In any other case, give notice to the relevant Licensing Board of their finding together with a recommendation as to whether the personal licence held by the Licence Holder concerned should be revoked, suspended or endorsed.
18. The Board should refer to the Legal Test Document on reviewing personal licences for further information.
19. The Boards’ current Scheme of Delegation make the following provisions for determination of review of premises licences:-

Section 1.11	Conducting a hearing under the Act including take any of the following steps: <ol style="list-style-type: none"> (a) At a review hearing in respect of a premises licence where necessary in terms of the licensing objectives flowing from the sale of alcohol: <ol style="list-style-type: none"> (i) Issuing a written warning to the premises licence holder (ii) Revoking or suspending the premises licence, or (iii) Making a variation of the premises licence. (b) Such hearings will be conducted by means of written submissions in the first 	Reserved to the Board
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	instance, where it is appropriate to do so.	
Section 3.6	Determining whether to make a premises licence review proposal	Delegated to the Clerk to the Board or any person appointed to assist them
Section 3.7	For the purposes of a review hearing, to obtain further information, request any person to attend to provide information and/or request production of any document at a review hearing	Delegated to the Clerk to the Board or any person appointed to assist them

Statutory Guidance

20. Chapter 8 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.

EXTRACT FROM SCOTTISH GOVERNMENT GUIDANCE TO LICENSING BOARDS RELATING TO PREMISES LICENCES

Review of a premises licence.

8.85. Sections 36 to 40 of the 2005 Act make provision for the review of a premises licence. A number of amendments have been made to the 2005 Act as enacted by the Criminal Justice and Licensing (Scotland) Act 2010 and (the majority) by the Air Weapons and Licensing (Scotland) Act 2015.

Application for a review

8.86. Any person can submit a “premises licence review application” to the relevant Board regarding a licensed premises on any of the grounds for review. The Air Weapons and Licensing (Scotland) Act 2015 amended Section 36 of the 2005 Act by adding a third ground for review. The grounds of review are:

- (1) are that one or more of the conditions to which the premises licence is subject has been breached, or
- (2) any other ground relevant to one or more of the licensing objectives or
- (3) not a “fit and proper person”

8.87. Depending on which ground for review is noted on the application, certain information must also be provided:

- (1) the condition or conditions alleged to have been breached
- (2) the licensing objective or objectives to which the alleged ground of review relates
- (3) a summary of the information on which the applicant’s view that the alleged ground applies is based.

8.88. A Licensing Standards Officer (LSO) is only able to apply for a review on the ground that there has been a breach of licence conditions if the LSO has issued a written warning about the breach and the LSO is not satisfied with the action taken by the licensing premises holder in response to the written warning.

8.89. The Air Weapons and Licensing (Scotland) Act 2015 further amended section 36 to clarify that any person who makes a premises licence review application may include any information in that application that the person considers relevant to the Licensing Board’s consideration of the alleged ground of review. This could include information relating to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.

8.90. A Licensing Board may reject a premises licence review application if the Board considers the application:

- Is vexatious or frivolous, or
- Does not disclose any matter relevant to any ground for review.

If a Licensing Board rejects an application on one of the grounds mentioned above then it must give notice of the decision, and the reason for it to the applicant. Provision is also made for a Board to recover, from the applicant, any expenses incurred by the Board in considering a vexatious or frivolous application.

Review of premises Licence on Licensing Board's initiative

8.91. Section 37 allows for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 36 (discussed above). Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report – known as a review proposal – setting out the grounds that it considers merits such a review of the premises licence. An Air Weapons and Licensing (Scotland) Act 2015 amendment provides that a Board's proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licensed premises.

Review Hearing

8.92. Section 38 of the 2005 Act requires a Licensing Board to hold a review hearing and determine an application for a review of a premises licence made under section 36 (or a review proposal under section 37). As discussed above, the Board does not need to hold a review hearing if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review.

8.93 In terms of notification of a review, the Licensing Board is required:

- In the case of a premises licence review application to give notice of the hearing to the applicant, and
- Give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder and any LSO for the area in which the licensed premises are located (unless in the case of a premises licence review the LSO is the applicant)

8.94 As discussed earlier in the guidance, where an LSO received a copy of a premises licence review proposal or application, the LSO must prepare and submit a report on the proposal or application to the Board before any hearing takes place. The Licensing Board must take account of this report at the hearing. Additionally, a Licensing Board is empowered to request information, the attendance at a hearing of any persons and the production of documents.

8.95 A Licensing Board has a range of sanctions that it may elect to impose on reviewing a premises licence. These are set out at Section 39 of the 2005 Act as amended by the Air Weapons and Licensing (Scotland) Act 2015. These steps are to:

- Issue a written warning to the licence holder
- Make a variation of the licence; may only apply for a period decided by the Board
- Suspend the licence for whatever period the Board may decide,
- Revoke the licence.

Section 39 also provides that where a Licensing Board is satisfied at a hearing that the licence holder fails the "fit and proper" test then the Licensing Board must revoke the premises licence. Subject to the revocation of a licence being recalled, a revocation takes effect at the end of the period of 28 days beginning with the day the Board made the decision to revoke the premises licence.

8.96 The 2005 Act as enacted has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Air Weapons and Licensing (Scotland) Act 2015 in relation to a Licensing Board giving notice of a decision made at a premises licence review hearing,. The 2010 Act inserted a new provision (Section 39A Notification of Determinations) into the 2004 Act and this provision was subsequently amended by the 2015 Act.

8.97 The rationale for the 2010 Act amendment was to seek to improve the transparency of the premises licence review process provided for in the 2005 Act. It ensures that

- Adequate notification of a Licensing Board's decision following a review hearing is given to the Licensing holder and the person who applied for a review
- When a Licensing Board takes action against a Licence Holder following a review hearing, the Licence Holder is able to request a statement of reasons from the Board – as already happened in the case of a premises licence application.
- A statement of reasons can be requested by a person who applies for a review of the licence, whether or not any action is taken by the Board following the review hearing.

The 2015 Act textual amendments were a result of the introduction of the fit and proper person test as a ground for refusal.

8.98 The 2005 Act provides (Section 40) a mechanism by which a Licence Holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of the premises licence removed. If the Board feels that the sanction in question is no longer necessary then, in the case of these two sanctions only, it may remove the relevant sanction.

Recall of revocation of licence

8.99 The 2015 Act inserted Section 39B which provides for the recall of a revocation of a licence under section 39(2A). This amendment and the amendment which inserted 28 days are linked to the "fit and proper person", also introduced by the 2015 Act. As noted during the parliamentary passage of the then Air Weapons and Licensing (Scotland) Bill, the Bill, on introduction, had provided for the immediate revocation of a premises licence on the grounds that, having regard to the Licensing objectives, the Licence Holder is not a fit and proper person to be the holder of a premises licence.

8.100 Concerns had been raised that without alternative disposal available to it, the Board might be reluctant to find that a person is not fit and proper to hold a premises licence. To address these concerns, one amendment provided that a revocation under the Licensing Board's powers of review would take effect at the end of a period of 28 days beginning on the day on which the Board makes the decision. The rationale being that this provided a short period of grace in which the Licence Holder may take action to address the problems that led to the Board making the findings.

8.101 The second and related amendment inserted a new section (Section 39B) into the 2005 Act. This section provides that when a Licensing Board has taken steps to revoke a premises licence on the ground that the licence holder is not a fit and proper person, the Board must recall the revocation if the relevant application is made within

that 28 day period and the Board ultimately grants the relevant application. These provisions enable Boards to take robust action when a Licence Holder is found not to be a fit and proper person and they offer reasonable traders the opportunity to take prompt action to address the Board's concerns and retain their licence.

