



## **Coming to a Licensing meeting**

### **Who is this note for?**

This note is for any member of the public attending Licensing Hearings, so

- applying for a Licence
- stating an objection or representation to a licence application ("O/Rs")
- making or answering a complaint about a licence

When we say "you" we are meaning any of these.

## Contents

What is the Licensing Authority? .....	4
Before you come to the meeting .....	5
Do I have to attend? .....	5
Where is the meeting? .....	6
Toilets .....	6
Canteen and Taxis .....	6
Documents you want us to look at .....	6
Sending us late documents .....	6
If you are disabled .....	8
Before the meeting .....	8
Who will be at the meeting? .....	9
How the meeting works .....	9
What should I say? .....	10
Do I need a lawyer? .....	10
Spokespersons .....	10
Petitions .....	11
How does the Licensing Authority decide? .....	11
Our approach .....	11
The information Licensing Authorities can use .....	12
Witnesses are not essential .....	12
What is the law on this? .....	12
“Sub Judice” - Allegations of criminal conduct .....	14
How parties should deal with this .....	14
How does the Licensing Authority proceed? .....	14
What could influence a decision to defer, or not? .....	14
The 'sub judice rule' .....	17

Excluded Matters - What NOT to tell us.....	19
Who is this advice for? .....	19
Our approach .....	19
List of Excluded Matters .....	20
Why we approach Excluded Matters like this.....	24
Licensing Committee .....	24
Licensing Board.....	26

## What is the Licensing Authority?

In this note we usually just say "we" or "the Licensing Authority" but there are actually two separate Council bodies that deal with Licensing different things. The details are different but in most of this note the differences do not matter.

When they do matter, we say, "Licensing Committee" or "Licensing Board":

### Licensing Committee

This makes decisions about Licences for things like Taxis, Markets, Short-Term Lets and Public Entertainment.

### Licensing Board

This deals with alcohol licensing (like pubs and off-sale shops) and gambling (like betting shops and gaming machines, although many things are dealt with outside the Council, by the "Gambling Commission").

These both have up to 10 Councillors - the same Councillors.

The Council website gives a lot of information about the Councillors. The names and contact details of each Councillor is on our website, found under the Members tab:

- [Licensing Committee](#)

The Councillor in charge of the meeting is called the Convenor. Currently this is Councillor Eleanor Collier.

If Councillor Collier is not available, the meeting will usually be chaired by the Vice Convenor, who is currently Councillor Nairn McDonald FRSA.

The Licensing Authority is made up of Councillors from all the political parties represented on the Council (and Independent Councillors, who are not linked to any party). The Licensing Authority is not political and often decisions are unanimous.

## **Before you come to the meeting**

### **Do I have to attend?**

**a)** If you are applying for a Licence:

You should attend or be represented by a Solicitor.

If the Councillors are not able to ask you questions, they may consider that they do not have enough information to decide. The Licensing Authority might continue consideration of your case to another date, but this is not guaranteed. It is possible that the Licensing Authority will refuse the application, which means:

- you might be barred from re-applying for 12 months (there are different rules depending on the kind of Licence)
- if your Application is under the Civic Government (Scotland) Act 1982 then you might be barred from appealing to the Sheriff if you do not attend (1982 Act, Schedule 1, Paragraph 18(2))

**b)** If you are objecting to a Licence Application or making a complaint about a Licence that has already been granted:

- You do not legally have to attend, and the Licensing Authority will look at anything you have sent in writing but

the Licensing Authority is more likely to give weight to your objection or complaint if:

- you attend
- you are available to answer questions from Councillors and to comment on anything said by the licence-applicant / licence-holder.

If your case is under the Civic Government (Scotland) Act 1982 then you might be barred from appealing to the Sheriff if you do not attend (1982 Act, Schedule 1, Paragraph 18(2)).

## **Where is the meeting?**

All Licensing Authority meetings are in Council Offices in Cunninghame House, Friars Croft, Irvine, either in

- Council Chambers on the ground floor (where the Full Council itself meets on other days) or
- one of the Committee Rooms on the ground floor

## **Toilets**

There are public toilets on the ground floor.

## **Canteen and Taxis**

There is no public canteen inside the Council building but in the Rivergate Mall there are many places to eat such as:

- 'Auld Brig' public house
- 'Greggs' bakery
- 'ASDA' supermarket

There are taxi stances outside the 'ASDA' supermarket and outside the railway station.

## **Documents you want us to look at**

If you want the Councillors to look at a document, you should send it to the Council at least seven days before the Hearing by email: [licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk)

Days before the meeting the Councillors will have 'Background Papers' which will include everything everyone involved in the case has sent us – letters, emails, objections, complaints, photographs, drawings.

If the Councillors do not see your document until shortly before the meeting, or even during the meeting, they might not have a chance to read it.

## **Sending us late documents**

If you send documents after the deadline (seven days in advance) or hand them to Councillors during the meeting:

- you should limit the size to two pages in total – otherwise we cannot guarantee that Councillors will take them into account when deciding the case
- If you hand out documents during the meeting you should make enough copies – there are up to ten Councillors, and you will need to give copies to all the other parties as well.



## **If you are disabled**

Tell us who you are so that we can make suitable arrangements for you.

When you come to the Council offices at Cunninghame House in Irvine you should speak to a member of Council staff at the counter at the main door and say what meeting you want to go to.

If you are disabled, then tell us as soon as you can so that we can help you. A member of Council staff will show you:

- where the Authority meets
- where the toilets are
- where you should wait – this depends on whether your case is at the Licensing Board or at the Licensing Committee (the email or letter we will have sent you will say which)
- The Convenor will tell you who is present
- At any time if you or your Assistance Dog need a break, tell the Convenor.

## **Before the meeting**

You should check that anything you want to say is within the legal powers of the Licensing Authority. Review the information contained in [Excluded Matters](#).



## Who will be at the meeting?

The Councillors sit at a large table, and you and the other parties will be sitting near that table.

Who else is there depends on whether your case is at the Licensing Committee or the Licensing Board:

- Licensing Committee

The Hearing is usually in private (the Committee usually make a "Resolution" to do this). You will be asked to sit in a separate room along with everyone else who has business at the Committee, and you will be invited into the Committee room one-at-a-time when the Board reach your case on the Agenda.

The only people allowed in the Committee room are:

- you
- people directly involved in your case
- legal representatives
- a companion for a disabled person

If you want anyone else to be in the room, you should ask the Committee's Convenor for permission. The Law is the Local Government (Scotland) Act 1973, Section 50A and Schedule 7A.

- Licensing Board

The Hearing is in public. You will be asked to sit in Council Chambers along with everyone else who has business at the Board, and you will be invited forward when the Board reaches your case on the Agenda. The Law is the Licensing (Scotland) Act 2005, Schedule 1, Paragraph 12.

## How the meeting works

A Solicitor accompanies the Councillors. This person works for the Council and cannot give you legal advice.

The Convenor will invite each party to state their case. Sometimes Councillors will ask questions.

How can I state my case?

You can state your case in spoken or written statements by

- you
- any witness for you

- your Solicitor

or a mixture of these.

You can ask a witness or Solicitor to speak for you, but the Council will not pay expenses.

## **What should I say?**

Apart from the [Excluded Matters](#), what you say is up to you, but if you are applying for a Licence you might want to tell us:

- your personal circumstances (e.g. what dependants you have)
- your work history (e.g. have you ever done this kind of work before?)
- if you get a Licence, will you work for yourself or for someone else (who?)
- if you get a licence, will it help others? (if you are starting a business, you might say how many jobs would be created)
- If you are dealing with a complaint, you might want to give your version of events, and if you accept the complaint, how would you do things differently in future?

## **Do I need a lawyer?**

We are not a Court so you do not have to have a Solicitor, but many people do, and you should consider getting independent legal advice if:

- you are applying for a Licence and someone else makes an objection or representation,
- you already have a Licence and there is a review, meaning that possibly the Licence will be revoked, suspended or restricted, or
- if the Licensing Authority has decided, you complain about (you should act quickly, because there are time limits on appealing to the Sheriff Court, sometimes as short as 21 days after the Hearing).

## **Spokespersons**

If you are objecting to a Licence or making a complaint, and other people are stating much the same position (for example, neighbours of Short-Term Lets often have much the same objection or complaint) the Convenor might ask you all to nominate a spokesperson. The Councillors will have seen each individual letter of objection or complaint, so even if a spokesperson is nominated the Councillors will still know what each person says.

## **Petitions**

Petitions are acceptable - but they might not be especially useful for you.

The opinion to agree to or oppose a proposal is likely to involve balancing several factors, for and against. It is unlikely that every single person who signs a Petition has exactly the same view as everyone else on these factors. So, the Licensing Authority is more likely to be persuaded by detailed comments by a few people who have actual experience of the complaint, such as nearby neighbours, rather than just having a list of signatures.

## **How does the Licensing Authority decide?**

Once everyone has said all they want, the Councillors decide. Sometimes they make the decision immediately, but they can adjourn the meeting briefly to discuss the case:

- If your case is at the Licensing Committee: You and all parties, including the Police, might be asked to leave the room briefly, and wait in the corridor while the Councillors discuss the case. When they have finished, everyone will be invited back in to hear the decision.
- If your case is at the Licensing Board: The Board might leave and move into a room next door to discuss the case, before returning. Everyone is expected to stand when the Board leaves and returns.

## **Our approach**

Every decision depends on its individual facts, but the Licensing Authority:

- is likely to approach licence applications on the basis that the proposal is lawful, and so the question is "why not?"
- is more likely to accept descriptions of things that have already happened (such as complaints of nuisance from a noisy public house) rather than predictions that a licence which has not yet been granted will cause problems.

# The information Licensing Authorities can use

## Witnesses are not essential

A Licensing Hearing is not a hearing of witnesses such as you might see in a Court. There can be witnesses, but the Licensing Authority may also take information from a wide range of sources, such as:

- an oral or written statements from that or any other party, such as an objection from a member of the public or a comment from a statutory agency, a Council Department or the Licensing Authority itself
- an oral or written statement from the Police. This usually contains information provided by other officers, so the officer attending our Hearing may only be a local officer with no personal knowledge of the particular case.
- submissions from a Solicitor on behalf of a licence-holder, licence-applicant or other party

The Licensing Authority has a discretion to proceed on any type of material which has a bearing on the question which it has to decide. That discretion is subject to any overriding requirement of Natural Justice (that means 'having a fair hearing' - for example, giving parties fair notice of what is said against them and giving them a chance to respond). The mere fact that the Licensing Authority decide to proceed upon one type of material and not upon another would not of itself indicate a failure to comply with Natural Justice. It is for the Licensing Authority to assess the sufficiency and quality of all the material.

## What is the law on this?

There are a lot of court cases on this. A few are:

- J.A.E. (Glasgow) Ltd v City of Glasgow District Licensing Board, 1994 S.L.T. 1164,
- Strathclyde Police v. North Lanarkshire Licensing Board, [2003] ScotCS 255, 2004 SC 304, 2003 S.L.T. 1268 Scottish Court of Session Decisions [Scottish Court of Session Decisions](#)
- Melville v City of Glasgow Licensing Board, [2012] ScotCS 77 Scottish Sheriff Court Decisions [Scottish Sheriff Court Decisions](#)

In the Melville case the Sheriff said:

"[100] The mere fact that material is disputed, or that the Board is faced with conflicting versions of events, does not necessarily disable the Board from reaching a decision to find the grounds for review established. Rather, if there is a dispute between the parties on a material issue of fact, and rebuttal material is presented, the value to be attached to those conflicting pieces of material remains a matter for the Board to assess, as the decision-maker.

[102] Thus, for example, it may be that, having carefully analysed all of the conflicting material presented to it, a Licensing Board may properly detect a substantial error, illogicality, irregularity, discrepancy, inconsistency, contradiction, ambiguity, imprecision, incongruity or absurdity within the material, or some other substantial reason, ex facie or intrinsic, to undermine or diminish the credibility or reliability of either version of events, or otherwise to justify, on objective grounds, preferring one version over the other."

## **“Sub Judice” - Allegations of criminal conduct**

### **How parties should deal with this**

- The Licensing Authority will sometimes get information from the Police about Licence-Applicants or Licence-Holders like:
- "The person has been charged with a criminal offence and the case is pending" {the Police would give details of the allegation, like the date and place and the nature of the charge}
- The Licensing Authority might still act on that information, and not wait to see if the person was acquitted or convicted. It might not be enough for the person to say to the Licensing Authority:
- "I will be pleading not guilty and I'm saying no more for now"
- If the person chooses to say that they may be prejudicing their position as far as the Licensing Authority is concerned, so should carefully consider their position and take independent legal advice.

### **How does the Licensing Authority proceed?**

Where the Licensing Authority only has an allegation of criminal conduct (and not a conviction in Court), it is not obliged to defer consideration of the case to await the conclusion of any Court case (whether involving the party or anyone else). It has a choice:

- to defer to see what happens in Court,
- to proceed to hear the case including the allegation, on the view that the information supplied by an independent legally constituted agency means that the person who is accused has to offer an explanation, or
- to proceed to hear the case excluding the allegation (on the view that if and when there is a conviction the party's Licence can be reviewed).

So, parties in licensing cases where such allegations are made should prepare for the Licensing Authority Hearing on the assumption that the Hearing will include the allegation, although the Licensing Authority will be open to a request that the Hearing should be deferred.

### **What could influence a decision to defer, or not?**

When the Licensing Authority is considering whether or not to defer, it should allow the party to make representations on matters including:

- a) prejudice to the party

If the Licensing Authority does defer, what effect will this have on the party?

- Application for a new Licence: If the party is applying for a new Licence, any deferral means that the party continues to be unlicensed, so unable to drive a Taxi, run a public house, or whatever else the party wanted the Licence for
- Application for renewal of an existing Licence: If the party is applying to renew an existing Licence, there are two possibilities – the position depends on the particular legislation:
  - a) some Licences have 'deemed renewal' rules, so if renewal is applied for before the earlier Licence expires, the earlier Licence remains in force no matter how long the case is deferred for, and eventually becomes a 'deemed grant' (e.g. licences under the Civic Government (Scotland) Act 1982), but
  - b) some Licences do not have 'deemed renewal' legislation (e.g. Personal Licences under the Licensing (Scotland) Act 2005) so any deferral means that the party is unlicensed because the earlier Licence has now expired.
- Complaint potentially leading to Revocation/Suspension: If the party has an existing Licence and there is now a proposal to review it (and possibly revoke or suspend it) then the Licence remains in force until the Review ends.
  - b) prejudice to the public interest

Does the apparent gravity of the allegation suggest that there is a substantial danger that public safety or public order would be compromised if the Licensing Authority failed to act promptly? For example, if we have a report from the Police that they have charged a licence-holder with an offence involving sexual crime, violence or drug-dealing, we might think that the wider public interest outweighs the licence-holder's interest.

c) the length of delay

Criminal proceedings may take many months. The Licensing Authority might ask about the stage in the Court process that the proceedings have reached (such as the date of any Trial or other Diet). Licensing Authorities have a duty to make decisions within a 'reasonable time' (whether or not there is a 'deemed grant' rule) and are not obliged to defer indefinitely.

The Law allows Licensing Authority to proceed despite denial.

If the person denies the allegation and says they will plead 'not guilty' in Court, this does not oblige the Licensing Authority to defer the Hearing to await the outcome of the Court case:

- a) A Licensing Authority is entitled to expect a party to provide information, explanations, or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he/she is not a fit and proper person or any other circumstance which appears to the Licensing Authority to have a bearing on the matter for decision. In this respect, there is a "practical onus" on the party:
  - McAllister v East Dunbartonshire Licensing Committee, 1998 SC 748 at page 757G-H.
  - Chief Constable of Strathclyde v North Lanarkshire Licensing Committee, 2004 SC 304 at paragraph [23].
  - Calderwood v Renfrewshire Council, 2004 SC 691 at paragraph 18.
  - Glasgow City Council v Bimendi, [2016] CSIH 41, Paragraph 28.
- b) The Licensing Authority is conducting "Civil Proceedings" in terms of the Civil Evidence (Scotland) Act 1988 (definition in Section 9, includes "(c) any proceedings before a tribunal or inquiry ...") and accordingly is a "Court" for the purposes of the Act.
- c) Evidence which is uncorroborated and/or hearsay is admissible (1988 Act, Sections 1 and 2). The weight to be placed on such evidence is a matter for the Licensing Authority.
- d) the Licensing Authority can:
  - be satisfied on the basis of any material which they consider relevant, and
  - hold facts proved 'on the balance of probabilities'.
- e) The Licensing Authority's proceedings comply with the Human Rights Act 1998. This guarantees a fair trial in both civil and criminal proceedings (Article 6(1)), but the legal basis of the "right to silence" is based on the "presumption of innocence", which only applies in criminal proceedings (Article 6(2))



- f) The existence of the "presumption of innocence" in criminal proceedings does not prevent the Licensing Authority from concluding that the information supplied is sufficient material to decide under the licensing legislation:
- Ferguson v Dundee City Council, [2006] CSIH 51
  - IB v General Medical Council, [2022] ScotCS CSIH 38.
- g) a person who chooses to remain silent when at the Licensing Authority Hearing, to avoid disclosing a defence to the criminal proceedings, fails to take the opportunity to state their case and risks the Licensing Authority deciding without taking account of his/her position. The party cannot contend that the Licensing Authority has failed to have regard to a material fact which the party has chosen not to disclose.
- h) In Licensing Committee proceedings under the Civic Government (Scotland) Act 1982 such a failure might bar an appeal to the Sheriff, since the Licence-Holder has failed to take the chance to state their case: Schedule 1, Paragraph 18(2).

### **The 'sub judice rule'**

The 'sub judice rule' does not mean that Licensing Authorities must defer cases pending proceedings in the Criminal Courts. It is directed at ensuring a fair trial by avoiding prejudicial publicity.

- a) The fact that the party has given information to the Licensing Authority does not prevent him/her later giving the same information to a criminal Court (if the party says X to the Licensing Authority and later Y to the Court, the consequences of that inconsistency arise after the Licensing Authority's proceedings and are the responsibility of the party);
- b) the standard of proof differs between:
- Licensing Authority – "on the balance of probabilities" (a lower standard)
  - Criminal Court – "beyond reasonable doubt" (a higher standard)

The fact that a Licensing Authority has decided that the facts are X does not mean that the Criminal Court should reach the same conclusion or is likely to do so.:

- The Licensing Authority may have proceeded on uncorroborated hearsay, and concluded "on the balance of probabilities", whereas
  - the Criminal Court might consider that the admissible evidence fails to meet the "beyond reasonable doubt" standard.
- c) In North Ayrshire, the Licensing Committee typically proceeds in private, after an "Exempt Information" Resolution under the Local Government (Scotland) Act 1973, Section 50A and Schedule 7A. There is no risk of prejudicial

publicity, for example by anything that anyone says during the Hearing becoming known to:

- the wider public
- reported in the Media
- the judge or potential jurors in the criminal case.

Neither the Press nor public are present. The legislation makes corresponding changes to the usual rules allowing public access to reports and background papers. There would be no reports in the Media, beyond those based on the formal statutory Minute – which is also redacted and is therefore brief – effectively it says no more than the Committee granted, refused, suspended, or did not grant, refuse or suspend – the Minute would not say why the Committee did what it did.

In Licensing Committee revocation/suspension hearings under the Civic Government (Scotland) Act 1982, Schedule 1:

- if it is alleged that a condition of the Licence has been contravened, the Committee can proceed notwithstanding that there has been no conviction in that respect (Paragraph 11(3))
- in any other case the Committee may have regard to "any misconduct on the part of the Holder of the Licence ... which in the opinion of the authority has a bearing on his fitness to hold a Licence" (Paragraph 11(4)(a)(i); and
- where the case relates to Premises, a vehicle or vessel, the Committee can consider any misconduct by other people in or in the immediate vicinity of the Premises, vehicle or vessel (Paragraph 11(4)(a)(ii)).

# Excluded Matters - What NOT to tell us

## Who is this advice for?

This is to help members of the public state their cases to the Licensing Authority: if they know what things are not relevant to their cases, they can concentrate on things that are relevant, so it'd more likely we will see their importance.

For example, we have had cases where an objector has given the Committee dozens of pages of their Land Certificate and complained that another party had broken Title Conditions – that complaint was wholly irrelevant, as far as the Licensing Committee was concerned, but it meant that the objector risked the Committee overlooking something it could do something about.

We accept that parties on all sides might well be acting without legal advice, so a comment from a 'party litigant' will be sympathetically considered to see if it contains anything that might be relevant. But we cannot guarantee that everything you say will be considered.

## Our approach

You should not tell the Licensing Authority about any of the Excluded Matters listed below.

This is because these Excluded Matters:

- are not relevant to the statutory "Grounds for Refusal" and
- the Excluded Matters are outside the powers of the Licensing Authority so the Licensing Authority could not base a decision on them.

While the Licensing Authority accept that it is possible for there to be a potential overlap between the Licensing legislation and other schemes of regulation (such as the Building Standards rules):

- there is no certainty that the Licensing Authority would act, as it might think that other legislation already provided other authorities with adequate powers to deal with the situation
- sometimes the Law prohibits us from having licence conditions about certain things.

The focus of the 'fit and proper' question is on the Licence itself. The statute says, "is not a fit and proper person to be the Holder of the Licence".

The words "to be the Holder of the Licence" are to be emphasised. The question is not whether or not the Licence Applicant/Licence Holder is 'fit and proper' generally. That is why it is unlikely that comments that the Licence Applicant has acted without Planning Permission or a Building Warrant or in breach of title conditions will justify refusal of Licence.

## List of Excluded Matters

a) Questions about the display or content of the Licensing Site Notice

If you are stating an Objection or Representation then you know of the application, whether this is:

- because you have seen the Site Notice,
- because you have seen the application advertised on the Council's website (which all licence applications always are), or
- otherwise (e.g. you might have heard from other neighbours)

It is unlikely that the Licensing Authority will consider that any such questions are relevant to the determination of a licence application.

b) Title Conditions, boundaries, rights of access, and common charges.

We have no legal power to:

- enforce title conditions
- decide disputes affecting boundaries, rights of access, common charges or
- deal with any other issue about private property.

You should instead take independent legal advice (not asking a Council lawyer) to find out what remedies (if any) you might have in the Sheriff Court or the First-Tier Tribunal. These matters relate to private contact and the Council cannot deal with such disputes, e.g. there is no point asking the Licensing Authority to look at Land Certificates.

c) Planning

The fact that an Occupier is operating without Planning Permission or in breach of conditions of Planning Permission is not relevant to the Licensing Authority unless

- the Occupier has been convicted of a criminal offence under that legislation, in which case the Police would report it to the Committee as a 'fit and proper person' issue.
- the property is a "Short-Term Let" in a "Short-Term Let Control Area" (there is currently no STLCA in North Ayrshire but if this changes then the Licensing Authority will know and it will not be necessary for third parties to tell us) or
- in a Licensing Board case – the Occupier is applying for a Licence (this is only because the legislation says that that is relevant).

The Licensing Authority does not have any powers under The Town and Country Planning (Scotland) Act 1997.

#### d) Building Control

The facts that an Occupier:

- has carried out building operations without a Building Warrant, or
- has allowed occupation without a Completion Certificate or Temporary Occupation Permission
- are not relevant to the Licensing Authority, unless
- there has been a criminal conviction under that legislation (in which case the Police would report it to the Committee as a 'fit and proper person' issue) or
- there is evidence that there is a "public safety" concern. While public safety is a legitimate consideration for a Licensing Authority, there will be few occasions when "public safety" would be the determining feature of a Licensing case - the Licensing Authority would be unlikely to act without a representation from the Council's Protective Services Department, and would be unlikely to accept the opinion of a neighbour saying something like "there's no Building Warrant so it must be unsafe"
- in a Licensing Board case – the Occupier is applying for a Licence (this is only because the legislation says that that is relevant).

The Licensing Authority cannot advise whether or not an Occupier does need Planning Permission, a Building Warrant and does not have any powers under the Building (Scotland) Act 2003.

#### e) Parking / Obstruction of Roads

The Licensing Authority has no powers to regulate road use by making Traffic Regulation orders or exercising the Council's powers as "Roads Authority". The use of public roads is also regulated by the Police (Road Traffic Act 1988, Road Traffic Regulation Act 1984, Roads (Scotland) Act 1984).

#### f) Waste bins and waste collection

The Licensing Authority does not have any powers under the Environmental Protection Act 1990.

In addition to the national Mandatory Conditions which automatically apply to all Short-Term Let Licences in Scotland, we apply this local Standard Licence Condition:

1. The licence holder must provide adequate information on, and facilities for, the storage, recycling and disposal of waste.
2. The licence holder must advise Guests of:
  - their responsibilities
  - the use of the bins / sacks provided for the premises, and

- the location of the nearest recycling centre or recycling point

### 3. The licence holder must

- clearly label bins as belonging to the premises
- ensure that Guests manage their waste in compliance with (2), including when they depart, and
- maintain the bin storage area and the exterior of the premises in a clean and tidy condition

This condition is applied anyway so neighbours do not have to raise it.

#### g) Access by emergency vehicles

The laws about these are not enforced by the Council but by other statutory bodies.

For example, under the Fire (Scotland) Act 2005, Section 25, an authorised employee of the Scottish Fire and Rescue Service may do anything believed necessary to deal with fires, including to:

- enter premises or a place (by force if necessary)
- move a vehicle without the consent of its owner
- force open and enter a lockfast vehicle
- close a road
- stop and regulate traffic
- restrict the access of persons to premises or a place.

The Police have similar powers in relation to fires under Section 26.

We always tell Police Scotland and SFRS of a Licence Application, and they each can comment if they think appropriate – if they were concerned that the proposals interfered with access by emergency vehicles, or they thought premises were unsafe, they would tell us.

In practice SFRS often respond to licensing consultations with a comment to the effect of:

"we have no objection to the Licence application, but if we later find fire safety issues, we will pursue these under our own legislation rather than licensing legislation."

The Council is expressly prohibited from having Licence Conditions which overlap with the Fire legislation:

- Committee: "The conditions referred to in Sub-Paragraph (1)(b) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005 (asp 5)." (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 5(2A))
- Board: "A Licensing Board may not impose a condition under subsection (6) which— ... (c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment." (Licensing (Scotland) Act 2005, Section 27(7)(c)).

h) Whether or not someone is guilty of a criminal offence

The Licensing Authority cannot enforce the criminal law. The Council always tells Police Scotland of a Licence Application, and they can comment if they think appropriate whether or not a court action (civil or criminal) should be, or should have been, decided in a certain way.

The Licensing Authority has had objections which raise matters which were the subject of a pending Court action or challenged previous Court decisions. The Licensing Authority has no legal power:

- to decide questions beyond the licensing legislation or
- to alter Court decisions.

Parties should instead take independent legal advice (not asking a Council lawyer) to find out what remedies they have (if any) in the Sheriff Court or the First-Tier Tribunal.

i) Whether or not Data Protection rules (including the use of CCTV) are being broken

These questions are not within the Council's powers. They may be matters for the Information Commissioner or the Police.

## Why we approach Excluded Matters like this

### Licensing Committee

1. The legislation which applies to the Licensing of taxis, short-term lets, public entertainment and many other things is the Civic Government (Scotland) Act 1982.
2. The Licensing Committee must approach any Licence Application with the starting assumption that the Licence should be granted or renewed unless the Committee is satisfied that one or more of the statutory "Grounds for Refusal" are established. The Law reflects the view that driving a taxi, operating a Short-Term Let should be permitted unless there is a good reason to stop it.
3. These "Grounds for Refusal" are stated in Paragraph 5(3) of Schedule 1 to the 1982 Act and are (read shortly):
  - a Licensing Authority shall refuse an Application to Grant or Renew a Licence if, in their opinion—
  - the Licence Applicant, or someone involved in the licensed activity, is not a fit and proper person
  - the premises are unsuitable for the proposed use
  - In a STL case: the Applicant is unable to comply with the STL licence conditions
  - In a STL case: if the Applicant is not the owner, the owner has not consented
  - there is another good reason for refusing the Application
  - and otherwise, shall Grant the Application.
4. Paragraph 3 of that Schedule sets out the procedure for Objections and Representations ("O/Rs"). This includes:
  - a) Any Objection or Representation relating to an Application for the Grant or Renewal of a Licence shall, subject to Sub-Paragraph (2) below, be entertained by the Licensing Authority if, but only if, the Objection or Representation specifies the grounds of the Objection or, as the case may be, the nature of the Representation.
5. In this context, 'specific' means giving the Applicant fair notice of material which the party making the O/R says is relevant to the prescribed "Grounds of Refusal" - the potential Grounds for Refusal stated in Paragraph 5(3).
6. If an Objection raises Excluded Matters, then to that extent, the Objection is incompetent because it cannot be entertained: the Licensing Committee cannot do anything about whatever the person raises.



Put shortly, the Licensing Committee cannot base a decision on reasons which are not set out in Paragraph 5(3). The "Grounds for Refusal" do not permit the Licensing Committee to base a decision to grant or refuse a Licence on the situation under the separate legislation about Planning or issues about title conditions.

7. The Licensing Committee will initially consider all objections, representations and complaints but may either:
  - reject them to the extent that these involve Excluded Matters or are otherwise irrelevant to the Licensing Committee, or
  - accept them as valid but attach little or no weight to them.
8. This means that anyone stating Objections or Representations should:
  - consider wording their comments (both those in writing and made verbally during the meeting) to avoid Excluded Matters and
  - be ready to explain to the Licensing Committee why their comments are relevant, especially if they do contain Excluded Matters
9. The same approach will be followed by the Committee in relation to complaints which invite the Licensing Committee to revoke or suspend a Licence (Paragraphs 11 and 12). The Licence-Holder must be given 'fair notice' of the complaint – enough detail to allow them to investigate and respond and the Licensing Committee cannot act outside their own powers, as by considering a situation under another statutory scheme (like Planning).
10. Our obligation to observe the European Convention on Human Rights ("ECHR", Human Rights Act 1998, Section 6(1)) has this exception:
  - "6(2) Subsection (1) does not apply to an act if—
    - a) as the result of one or more provisions of primary legislation, the Licensing Authority could not have acted differently.
11. Paragraph 3(1) is such a provision: the Civic Government (Scotland) Act 1982 is "primary legislation" because it is a Westminster Act. Given "shall" in Para. 3(1), "the Licensing Authority could not have acted differently". So, because Paragraph 3(1) prohibits the Licensing Committee from entertaining unspecific O/Rs, the Human Rights Act 1998 does not apply.
12. The decision on whether or not a comment meets the requirement for specification is one for the Licensing Committee, and you cannot:
  - a) ask for a Statement of Reasons or
  - b) appeal to the Sheriff Court.

The reasons for this are:

- the only decisions for which a Statement of Reasons may be requested this decision are listed in Paragraph 17. A party can only seek a Statement of Reasons if he/she is already the maker of a "Relevant objection or representation", so the question of relevance must have been determined earlier
- as no Statement of Reasons under the Schedule can be required, there can be no appeal to the Sheriff under Paragraph 18 (the provision uses the phrase "under this Schedule" so it does not change things if the Licensing Authority issue a Statement of Reasons without being required to do so by the 1982 Act).

## **Licensing Board**

A similar approach is appropriate in the Licensing Board under the Licensing (Scotland) Act 2005:

- O/Rs must be specific. Anyone can object to the application on any ground relevant to one of the Grounds for Refusal specified in Section 23(5) and (Section 22(1)(a)).
- A Licensing Board may reject an O/R if the Board considers it "is frivolous or vexatious" and order the maker to pay expenses (Section 22(4)-(6)).
- Review Applications (complaints) must be specific "Section 36(5) A Premises Licence Review Application must specify the alleged Ground for Review".