

## North Ayrshire Licensing Board

### Advice Note

#### Using extra Outdoor Drinking Areas during the Coronavirus Emergency

##### **IMPORTANT**

**You can apply for a Licence now - but you will not be able to use the land you want until the Board grants the Licence.**

#### **1. Introduction**

- 1.1. During the Coronavirus Emergency the Licensing Board has agreed special procedures which will allow on-sales Premises like Public Houses, Restaurants and Clubs to have Outdoor Drinking Areas (here "ODAs") in places that are not already covered by the Premises' own "Premises Licence":
  - areas like carparks
  - sometimes Premises already have a 'beer garden' in part of the ground beside the Premises, with the rest of the ground owned by the Premises but not covered by the Premises Licence. If the Licence Holder wants to use the rest of the ground, an Occasional Licence is needed.
- 1.2. No extra Licence is needed to use an ODA which the Premises Licence already covers
  - this Advice Note deals with the situation where a business owner wants to get an "Occasional Licence" for places that are not already covered.
- 1.3. This Advice Note has been written to help the public apply for Occasional Licences. Because it is aimed at the public generally, it might not cover your particular requirements. You should always consider asking an independent solicitor, architect or surveyor. Although the Board's own staff will help you, you cannot ask them to overrule Board Policies.

#### **2. How many Licences do I need?**

By Law, a single Occasional Licence can only last a maximum of 14 days, so if you are planning to use your ODA for weeks or months you will need to apply for many Occasional Licences. You can apply for many at the same time, but it is better if you apply for them one at a time, waiting until the first is granted before lodging the second Application, and so on for the third, fourth and later Applications. See Paragraph 4 below - "Multiple Applications" for an explanation.

There is usually no problem about Premises applying for many Occasional Licences, for successive periods. With one exception, there is no limit to the number of Occasional Licences that people can apply for: see Paragraph 3 below - "Club & Voluntary Organisation Limits".

#### **3. Club & Voluntary Organisation Limits**

The exception is that Clubs and Voluntary Organisations are limited to 4 Occasional Licences of 4 days or more, plus 12 Occasional Licences of less than 4 days, provided that the total period in the year covered by Occasional Licences is no more than 56 days.

This limit does not apply to Clubs:

- which have already been granted a Variation to have their Premises Licence amended to 'Part K' conditions, or
- where the area they want to cover in an Occasional Licence is outside the area covered by the Layout Plan in their Premises Licence (e.g. a Club's carpark might be outside)

This limit does not apply to Premises like Public Houses and Restaurants

#### **4. Multiple Applications**

Please do not apply for several Occasional Licences for the same ODA **at the same time**.

You might be planning to lodge several Applications at once, covering a succession of 14-day periods. We ask you **not** to do this, and to lodge the Application for the second period only after the first Application has taken effect, and so on for the third, fourth and later periods. The reasons for this are:

- (a) the Licensing Office at Cunningham House in Irvine is closed, and all the staff are working from home. If people apply for more Licences than they immediately need, we might not be able to process them in time for the start date you hoped for;
- (b) even if you lodge many Applications at once, we will not decide on all of them at the same time. Instead, what we will do is make a decision on the first Application, and a few days after the first Occasional Licence has taken effect, we will decide the second, and then the third, and so on;
- (c) lodging them one-at-a-time might save you money. Every Occasional Licence Application is treated on its own, and the fact that the Board has granted Occasional Licences for the ODA before does not mean that the Board is guaranteed to grant again and again. It is always possible that the Board might get objections or complaints after an ODA has been running for a while, which might lead to the Board refusing to grant a new Occasional Licence (legally, this means that you will have no 'legitimate expectation' that the Board will grant a second or later Occasional Licence). If the Board refuses to grant an Occasional Licence, you cannot get a refund of the Licence fee for that or any later Application, or a credit of those fees against any other fees you might have to pay later (such as the Annual Fee for your Premises Licence).

What we suggest is that you should lodge **one** Application, with all the extra documentation (Layout Plans, and evidence of right to use the land, and any Road Consent). We will make a decision on that.

If it is granted and has taken effect, you can lodge the second Application. For the same reason, we suggest that you delay lodging the third Application, and so on. An advantage for you is that the extra documentation only has to be lodged once - with the second and later

Applications, you just tell the Board that the same Layout Plan and the other documents still apply.

## **5. What do I need to get BEFORE I apply for an Occasional Licence?**

You should only apply for an Occasional Licence if you already:

- own or have permission from the owner of the land, and
- have any other permission required by Law

You must show us evidence of both permissions.

If you own the land:

we need to see your Land Certificate or other evidence of title.

For example, you might own a car-park beside your Premises - this car-park will not be included in the drinking area of your Premises Licence, so in normal times you could not use it for drinking, but during the Coronavirus Emergency you can ask for Occasional Licences.

We might dispense with proof of title if the Board can be satisfied from looking at a "Layout Plan" (either the plan attached already to your "Premises Licence", or the extra plan which you will need to apply for an Occasional Licence) that you own or have a right to occupy the land, but this depends on the circumstances of each case.

When you apply for an Occasional Licence you will have to give the Board a Layout Plan (either prepared by a professional like an architect or surveyor, or hand-drawn: in the latter case, you must follow the instructions in Part C of the "Application Schedule" (part of the application form).

If you do **not** own the land

we need to see your lease or occupancy agreement.

If you want to use land owned by North Ayrshire Council

you need a Lease. You should contact:

***landandproperty@north-ayrshire.gov.uk***

If you want to use a road, footway or footpath

you need Roads Consent from the "Roads Authority" under the Roads (Scotland) Act 1984, Section 59. The Roads Authority is different from the Licensing Board and we do not issue Roads Consent.

In most cases, the "Roads Authority" will be the Roads Department of North Ayrshire Council, but in the case of the A78 Trunk Road it is Amey Traffic Scotland. Contact the Council's Roads Department at:

***roadspermits@north-ayrshire.gov.uk***

If you want to use a car-park which you don't own, you might need Roads Consent, so ask the "Roads Authority".

**Important**

**The Licences which the Licensing Board can issue do not do these things, so business owners planning ODAs outside the area covered by their Premises Licences will have to make other arrangements as well as applying to the Licensing Board for a Licence.**

## **6. How to apply for an Occasional Licence**

6.1. You will need:

- (a) an Occasional Licence Application form - this form is the usual Occasional Licence Application form which was used before the Coronavirus Emergency, but it now includes an "Application Schedule". This gives the Board information about your proposal. It has instructions on it telling you how to complete it. You can get this form from this website.
- (b) a Layout Plan - this is separate from the Layout Plan attached to your Premises Licence, and shows the proposed ODA (see below for more details: Paragraph 7 "What should a Layout Plan show?");
- (c) the documents described in Paragraph 5 above "What do I need to get BEFORE I apply for an Occasional Licence?"

6.2. You only have to give us the Layout Plan and the other documents once: If this Application is the second or later Application for the same ODA, mark this on the "Application Schedule" (at Part B) and skip the rest of the form. We will assume that you want the same information and documents to apply to this Application.

6.3. As the Licensing Office at Cunningham House in Irvine is closed, and all the staff are working from home, you should send Applications and all supporting documents by email to

***naclicensingapplications@north-ayrshire.gov.uk***

6.4. At the same time, you should email that address to ask about paying the fee of £10. The fee is £10 per 14-day Licence, so if you are lodging six-months' worth you will pay £130. As this fee is not refunded if any Application is refused, it is better to only apply one-at-a-time.

## **7. What should a Layout Plan show?**

You can choose to employ an architect, surveyor or other professional to draw your Layout Plan, but if you do it yourself

- make sure that you cover all the things set out below
- we need the measurements of the lengths of the boundary and widths of the entrances, exits and access routes

The Layout Plan must be at 1:100 scale and must show:

- the boundary of the proposed ODA
- entrances, exits and access routes between tables and chairs
- the positions of tables and chairs
- positions of roads and nearby buildings
- the position and field of view of any CCTV camera monitoring the proposed ODA
- if the proposed ODA is in a public place, like a pavement or carpark, you will need a physical barrier separating the Outdoor Drinking Area from the public area (such as a tensa barrier or planter). Give us a diagram or picture of the proposed barrier.

Remember the rules about 'social distancing' - the Board might license the area for fewer people than you hoped. One of the Consultees that we will ask about your Application is the Council's "Protective Services" department, and they might reply something like:

*"The Applicant wants to put 100 customers into the ODA. However, looking at the Layout Plan and allowing for the 'social distancing' rules, the ODA should only have a maximum capacity of 60 customers."*

If that happened, it would be likely the Board would refuse your Application altogether unless you agreed to limit it to 60.

Also, if you want to use a place that needs "Roads Consent", you will have to leave 2 metres free width on the pavement or road surface so that pedestrians can get past.

## **8. How we will deal with your Application**

### 8.1. When you apply, we will

- (a) put a Notice on our website advertising your Application; this is so that the public can learn of your proposal and make comments
- (b) inform these Consultees:
  1. Police Scotland
  2. Licensing Standards Officer
  3. NAC Protective Services (Environmental Health)

4. NAC Roads
5. NAC Estates (for information only)
6. NAC Planning

8.2. The procedure during the Coronavirus Emergency should be quicker than usual. We have reduced the usual consultation period from 7 to 4 days.

8.3. When we receive your application, we will advertise it on our website and ask for consultee responses.

- If there are no objections or comments from the public or any of the consultees, we grant the Occasional Licence immediately after the 4 days (if this is the first Occasional Licence Application for the ODA, it might take a couple of days longer);
- If there are objections or comments, we will consult with the Chairperson of the Licensing Board. If it is decided that further information is required will invite you to make comments by email. This would postpone a decision for a few days, but the process will be completed as soon as possible.

It might be, of course, that any issues can be resolved by you modifying the Application. For example:

- if you proposed an area with 100 customers and NAC Protective Services said that 'social distancing' meant the area could only hold 60, we could just grant the Application if you agreed to 60.
- if you proposed an area of pavement but the Roads Authority said that it did not leave enough space for pedestrians, we could just grant the Application if you agreed to a suitable reduction.

## **9. When will the Licence start?**

We will not grant a Licence to take effect while the lock-down Regulations still prevent ODAs. On Wednesday 24 June 2020 the First Minister announced that ODAs could open on 6 July 2020, so this is the soonest possible date that a licence could start. However, the actual start date of a licence is dependent upon a variety factors including the provision of the required documentation at the outset, the outcome of the consultation process, and the fact that the Licensing staff are administering the whole process remotely.

We will date later Licences after the first so that they come into force immediately after the end of the current Occasional Licence expires.

## **10. What Licence Conditions will I have?**

Your Licence will be sent out with a "Conditions and Capacity Document".

This is part of the Occasional Licence which

- sets out the conditions which you have to follow
- sets the Maximum Capacity of the ODA

If you have a Roads Consent, you will also have to follow the conditions of that.

