

North Ayrshire Licensing Board

Answers to Frequently Asked Questions - Personal Licence Holders (15 October 2018, updated 7 May 2019 and 3 June 2019)

This Advice Note has been prepared by North Ayrshire Licensing Board to give advice to people who hold Personal Licences and want to renew them, or who want to apply for Licences. We also give "Answers to Frequently Asked Questions".

This Advice Note is based on the rules which are currently in force. The rules are later changed by the Scottish Government, we'll update this advice note.

IMPORTANT - READ FIRST

You should read the notes in this box before you look at the "Answers to Frequently Asked Questions".

- Many Personal Licences were effective on 1 September 2009, which is when the current Licensing system started, but some were only effective later in 2009. To make this Advice Note easier to follow we refer here to 1 September 2009 and dates linked to it (for example, Personal Licences last 10 years, so a Licence which became effective on 1 September 2009 would expire on 31 August 2019).

BUT

when applying this Advice Note to your own situation, look at the "Expiry Date" shown on your Licence, and count back 3 months from that date. For example, if your own Licence has an "Expiry Date" of 1 October 2019, this means that the nine-month period in which you can apply for renewal started 12 months before that date (1 October 2018) and ends 3 months before the "Expiry Date" (1 July 2019). The Law is in the Licensing (Scotland) Act 2005, Section 78.

When you see * you should refer to this note.

- The Scottish Government has issued the following Guidance and Frequently Asked Questions ("The Licensing (Scotland) Act 2005 – Personal Licence Holder Communications Document") at

<https://beta.gov.scot/publications/licensing-scotland-act-2005-personal-licence-holder-communications-document>

You should read that too.

- The Scottish Government has set the rules about Licensing Qualifications. This statement was issued on 4 October 2018 and is set out at the end of this Advice Note ("What Training Qualification do I need?").

There are different rules depending on what you want to do:

[1] Apply for the grant of a new Licence:

- if you have missed the deadline for renewal, or

- if you held a Licence before but the Board revoked it, or

<p>- if you held a Licence before but you surrendered it, or</p> <p>- if you have never held a Licence before</p> <p>[2] Apply to <u>renew</u> an existing Licence</p> <p>[3] Do 'refresher training'</p>
<ul style="list-style-type: none"> • A "refresher" Certificate is <u>different</u> from the Certificate you would need to apply for a <u>new</u> Licence - so make sure you ask for "The Scottish Certificate for Personal Licence Holders". See "What Training Qualification do I need?" below.
<ul style="list-style-type: none"> • If you have a Training Certificate, you should apply now. • If you don't have a Training Certificate, you should contact a Training Provider <u>now</u> to arrange a Training Course.
<ul style="list-style-type: none"> • This Advice Notes refers to Groups A, B, C & D. This is because the rules apply differently to different Groups of Personal Licence Holders. To find out which Group you are in, look at the "Expiry Date" on your Licence: Group A: my "Expiry Date" is 31 August or 1 September 2019 and I did apply by the Renewal Deadline of 31 May 2019 Group B: my "Expiry Date" is 31 August or 1 September 2019 but I did <u>not</u> apply by the Renewal Deadline of 31 May 2019 Group C: my Renewal Deadline has not happened yet, and I plan to apply before then Group D: my Renewal Deadline was after 31 May 2019, but I missed it.
<ul style="list-style-type: none"> • To make this Advice Note useful to as many people as possible, it gives <u>general</u> advice and does not deal with the circumstances of any particular person. This Advice Note sets out our understanding of the Law and the Guidance issued by the Scottish Government. It is no substitute for independent legal advice. Anyone who wants specific advice should consult a Solicitor <u>outside</u> the Board. The Board does not warrant that the information given here is <u>appropriate</u> to any particular person and does not accept liability for reliance on the information.

Answers to Frequently Asked Questions

I have a Personal Licence but it is due to expire in 2019. What should I do now?

Group A

You are OK if you have already given us a training certificate. If you applied without a training certificate, you will need to give the Board a copy when you get it.

Your existing Licence will stay in force past the "Expiry Date". It will stay in force until 29 February 2020, unless the Board makes a decision on your Renewal Application before that.

As well as applying for Renewal, you have to meet the "Refresher Training" rules - see below "What are the "Refresher Training" rules?"

You should contact a Training Provider now to arrange a Training Course leading to the "Scottish Certificate for Personal Licence Holders (Refresher)" Certificate.

A "refresher" Certificate is different from the Certificate you would need to apply for a new Licence - "The Scottish Certificate for Personal Licence Holders" - so make sure you ask for the right one.

Group B

Your Licence will still expire on the "Expiry Date".

Because you lodged your Application after the deadline:

- we cannot treat your Application as requesting renewal of your current Licence. Instead, we will treat it as requesting a new Licence, to start immediately after your current Licence expires (and not the renewal of your existing Licence)
- your current Licence will still expire on the "Expiry Date" printed on it (the Licence is not kept going because there is a pending application)
- you will need to go on a second training course if the certificate you have is a 'refresher' certificate. You need "The Scottish Certificate for Personal Licence Holders" (a 'full' training certificate). The "Scottish Certificate for Personal Licence Holders (Refresher)" is not enough. You should still give us a copy.

If you only have a 'refresher' certificate, you need to do 3 things before your current Licence expires.:

- go on another course
- get a 'full' training certificate
- give a copy of this to us

We cannot grant your new Licence until you do this, so it is important that you give us a copy of the 'full' training certificate as soon as you can. We will try to process your Application before your "Expiry Date", or as soon as possible afterwards. If you are later asked to come to a Board Meeting, you should do so. Most Applications will be granted without needing a Board Meeting, but the Board has arranged an extra meeting for Wednesday 21 August 2019 in case there are Applications that need a Board Meeting.

People in Group B do not need refresher training.

Group C

Your Licence will still expire the "Expiry Date". It is not kept going because there is a pending application.

You can still use a Refresher Certificate. If you applied without a training certificate, you will need to give the Board a copy when you get it.

People in Group C need refresher training as well. See "Group A" above.

Group D

Your Licence will still expire on the "Expiry Date".

Because you lodged your Application after the deadline:

- we cannot treat your Application as requesting renewal of your current Licence. Instead, we will treat it as requesting a new Licence, to start immediately after your current Licence expires (and not the renewal of your existing Licence)

- your current Licence will still expire on the "Expiry Date" printed on it (the Licence is not kept going because there is a pending application)

- you will need to go on a second training course if the certificate you have is a 'refresher' certificate. You need "The Scottish Certificate for Personal Licence Holders" (a 'full' training certificate). The "Scottish Certificate for Personal Licence Holders (Refresher)" is not enough.

If you only have a 'refresher' certificate, you need to:

- go on another course
- get a 'full' training certificate
- give a copy of this to us before your current Licence expires.

We cannot grant your new Licence until you do this, so it is important that you give us a copy of the 'full' training certificate as soon as you can. We will try to process your Application before your "Expiry Date", or as soon as possible afterwards. If you are later asked to come to a Board Meeting, you should do so.

People in Group D do not need refresher training.

I used to have a Personal Licence. What should I do now?

A lot of licences were surrendered or revoked due to the 'refresher training' rules. If you used to have a Licence, but you no longer have it because either you surrendered it or it was revoked, **you are not applying to renew it**. Instead you want the Board to **grant a new Licence**.

See the questions below:

"I had a Licence, but I surrendered it. Can I re-apply for the grant of a new Licence?"

or

"I had a Licence, but it was revoked. Can I re-apply for the grant of a new Licence?"

I don't have a Training Certificate yet. Can I still apply?

Not if you are in Group B or Group D. There was a special rule allowing some Applications to be lodged without a training certificate, but that rule only covered Groups A and C.

If you are in Group C, you still need to get a Certificate, so you must go on a course as soon as you can. You must give us a new Certificate before your current Licence expires. If we don't get the new Certificate before then, you will be unlicensed even if you have applied for renewal. You can apply for renewal without a new Certificate, but we cannot grant the renewal application until we see it.

What happens if I am in Group C and the "Expiry Date" passes without you seeing my new Training Certificate?

If your Licence expires before you give us the new Certificate, we will treat your Application as requesting the grant of a new Licence (instead of the renewal of the original Licence)

BUT

the sort of Certificate you have will affect what happens next. Look at "What Training Qualification do I need?" at the end of this Advice Note.

There are 4 kinds of Certificate you can use for a renewal, but only one of these can be used for a grant: "The Scottish Certificate for Personal Licence Holders".

The other three cannot be used for a grant. So if you have a refresher certificate, you can't use it to get a Licence any more.

You need to arrange another Training Course, this time one leading to "The Scottish Certificate for Personal Licence Holders". When you get that Certificate, give it to us.

What are the "Refresher Training" rules?

A Personal Licence lasts 10 years, but as well as applying for renewal, you must do two things together:

- by the 'refresher deadline' (look at the "Expiry Date" on your Licence and count back 5 years) you must sit an extra 'refresher training' course; and

- within 3 months after the 'refresher deadline', give the Board a copy of your new 'refresher training' Certificate.

You must do both of these every 5 years (not just in the middle of the 10-year life of the Licence). If you don't do both then the Board is legally required to revoke your Licence. The Board has no discretion and you cannot appeal to the Sheriff. The Board cannot allow you more time.

Once I have the Training Certificate, what should I do to meet the "Refresher Training" rules?

If you already have a Personal Licence, you should do two things:

- Send a copy of the Refresher Certificate to the Board no later than 3 months after the 'refresher deadline'. The deadline is five years counted back from the "Expiry Date" shown on your Licence. If you don't show that Certificate to the Board in time, the Board is legally obliged to revoke your Licence (even if you do in fact have the Certificate). The Board cannot extend the time.
- Apply for renewal of your Personal Licence, so that is valid for another 10 years after the "Expiry Date". You can use the Refresher Certificate for this as well (so long as you obtained it within the 5-year period prior to your "Expiry Date").

I had a Licence, but I surrendered it. Can I re-apply for the grant of a new Licence?

Yes, but you will be applying for a new grant, and not for the renewal of your old Licence. You might need a new Training Certificate: see "After my old Licence was revoked or surrendered, do I need to get a new Training Certificate?" below.

Some people did not do what they had to under the Refresher Training rules, so their Licences were due to be automatically revoked under the legislation. If their Licences had been revoked, this would have meant that they could not re-apply for 5 years. To avoid the bar being so long, some people chose to surrender their Licences before they were revoked, because the bar after surrender is only 3 years.

The Law has since been changed, and a failure under the Refresher Training rules no longer means that a person is barred from re-applying.

It is still the Law that a Licence is automatically revoked if the person does not do what they have to do under the Refresher Training rules. This is caused by the legislation, and the Board cannot change this or allow someone more time to meet the rules.

I had a Licence, but it was revoked. Can I re-apply for the grant of a new Licence?

This depends on why it was revoked:

(a) because of a Review Hearing (often, this follows a conviction in a criminal Court)

(b) because of the Refresher Training rules

Even if you can apply, you will be applying for a new grant, and not for the renewal of your old Licence.

If your Licence was revoked:

(a) because of a Review Hearing

You can't re-apply until 5 years after the Licence was revoked, and even then will probably need to get a new Licensing Qualification first. See "After my old Licence was revoked or surrendered, do I need to get a new Training Certificate?" below.

(b) because of the Refresher Training rules

You can re-apply at any time (you don't have to wait 5 years) but you might need to get a new Licensing Qualification first. See "After my old Licence was revoked or surrendered, do I need to get a new Training Certificate?" below.

After my old Licence was revoked or surrendered, do I need to get a new Training Certificate?

It depends on what sort of Certificate you had when you applied for a Personal Licence before:

(a) If you already have "The Scottish Certificate for Personal Licence Holders" then you can use it again (because the Scottish Government says that it "whenever obtained, continues to be accredited")

but

(b) if you have old qualifications:

- "Scottish Certificate for Personal Licence Holders (On-Sales)"
- "Scottish Certificate for Personal Licence Holders (Off-Sales)"

you cannot use them again. The "Scottish Certificate for Personal Licence Holders" was introduced on 1 August 2013, and replaced the old qualifications. You can use them for the sole purpose of applying before 31 May 2019 *, but you will need to show us an up-to-date refresher Certificate before we can grant your application.

See "What Training Qualification do I need?" below.

I have a 'Refresher Training' Certificate. Can I use that when I apply for renewal?

Yes - if it was obtained within the 5-year period prior to your "Expiry Date"

BUT

This only applies if you are applying for renewal. If your original Licence has expired, you will now be applying for a new Licence (and not the renewal of the original Licence), and you can't use a 'Refresher' Certificate to do that. Instead, you need to get a new Certificate - "The Scottish Certificate for Personal Licence Holders";

If the 'Refresher Training' Certificate is older than 5-years prior to your "Expiry Date", then you cannot use it for renewal. You would need to get a new Certificate - "The Scottish Certificate for Personal Licence Holders".

You can't use a 'Refresher Training' Certificate to get a grant of a new Licence. If you had a Licence but

- it was revoked, or
- you surrendered it, or
- it expired before the Board granted a Renewal Application (whether or not you had applied for renewal)

you might already have a 'Refresher Training' Certificate, but it's not enough to get a grant of a new Licence. Some people had a 'Refresher Training' Certificate but their Licences were still revoked (or they surrendered it before it was revoked) because they did not show the Certificate to the Board within 3 months. They can't use the 'Refresher Training' Certificate if they are wanting a grant of a new Licence, not renewal of an existing Licence.

Those people would need to get a new qualification - "The Scottish Certificate for Personal Licence Holders".

I got a Training Certificate years ago, but I didn't apply for a Licence at the time. Can I still apply?

This depends on the type of qualification you have and when you got it. See "What Training Qualification do I need?" below.

- (a) If your Certificate was "The Scottish Certificate for Personal Licence Holders" then you can use it (because the Scottish Government says that it "whenever obtained, continues to be accredited")

BUT

- (b) if you have old qualifications:
- Scottish Certificate for Personal Licence Holders (On-Sales)
 - Scottish Certificate for Personal Licence Holders (Off-Sales)

you cannot use them. The "Scottish Certificate for Personal Licence Holders" was introduced on 1 August 2013, and replaced the old qualifications.

I have a Training Certificate from England and Wales. Can I use that?

No. The separate alcohol licensing system in England and Wales also has "Personal Licences", but the rules are very different (in England and Wales, the Law is the "Licensing Act 2003", and in Scotland the Law is the "Licensing (Scotland) Act 2005"). You need a course and qualification tailored to the system in Scotland.

A Board in Scotland cannot accept a Certificate from England or Wales. This is because the standards that "Licensing Qualification" Certificates must meet are set by Law made by the Scottish Parliament. The standards are set according to the "Scottish Credit and Qualifications Framework" ("SCQF", <http://www.scqf.org.uk>).

See "What Training Qualification do I need?" below.

When can I apply to the Board for renewal?

It is not enough that you have a Training Certificate. You must also apply to the Board to renew the Licence.

By Law you can only apply in the 'renewal window' - this is the period:

- starting 12 months before the "Expiry Date", and
- ending 3 months before the "Expiry Date"

If the "Expiry Date" on your Licence is 31 August 2019, this means:

- the 'renewal window' for you was 31 August 2018 to 31 May 2019,
- so it is now too late for you to apply for renewal,
- you can still apply, but you will be asking the Board to grant a new Licence,
- the Licence you currently have will still expire on 31 August 2019 (whether you apply for a new Licence or not)

If your Personal Licence was issued later in 2009, your "Expiry Date" will be later in 2019.

If you want to keep your Licence after the "Expiry Date", you must apply in enough time for the Board to grant your Application before your Licence expires. It is not enough that you apply before then - if you want to be licensed after the "Expiry Date" then you must give the Board enough time to deal with your Renewal Application.

When should I apply to renew?

You should apply to the Board as soon as you have a Training Certificate.

See "What Training Qualification do I need?" below.

The UK Government is currently introducing Immigration regulations to ensure that applicants for Personal Licences can be checked for their right to work in the UK. These rules are not in force yet but might come into force over the next few months. If this is implemented for these Licences (and there is still doubt if it will be introduced and when) then it may delay the renewal process. This delay will be beyond the Licensing Board's control. That is another reason why we recommend an early application.

How much does it cost to apply for renewal?

£50. This is the fee for the Application itself, and is not refunded in whole or in part:

- if the Board refuses your Application
- if the Board later revokes, suspends or endorses your Licence
- if your current Licence expires before your renewal application is granted.

What form do I use to apply to renew?

You should use the same form you would use to apply for a new Licence. The same form covers both new applications and renewal applications.

If you have one of these, you need to give us a copy:

- The Scottish Certificate for Personal Licence Holders
- The Scottish Certificate for Personal Licence Holders (Refresher)

I don't live in North Ayrshire any more. What Board should I apply to?

It depends what you want to do:

(a) I want to apply for the grant of a NEW Licence

You should apply to the Board where you are "ordinarily resident" (Licensing (Scotland) Act 2005, Section 72(1)), so you should contact your local Board.

(b) I want to apply to renew my EXISTING Licence

This Board still deals with your Licence, even if you have moved to another part of Scotland, or outside Scotland, so if you want to renew an existing North Ayrshire Licence, you need to apply to North Ayrshire Licensing Board.

The Law says that you should have kept us updated with your new address. The rules say that Boards have to write to Licence Holders to remind them of the need to get renewal, but if the Board doesn't have your address then you'll probably not get the letter. If you've moved address since the Licence was granted you should contact the Licensing Office to check that we have your up-to-date details:

North Ayrshire Licensing Board
Democratic Services
Cunninghame House
Irvine
KA12 8EE
Tel No. 01294-324305
email: licensing@north-ayrshire.gov.uk

Make sure that you have your Licence Number.

What happens if I have applied for renewal but the "Expiry Date" arrives?

This depends on what Group you are in:

Group A:

Your existing Licence will stay in force past the "Expiry Date". It will stay in force until 29 February 2020, unless the Board makes a decision on your Renewal Application before that.

Groups B, C & D:

If the Board has not granted your renewal by the "Expiry Date", your Personal Licence stops automatically. There is no appeal to the Sheriff and the Board cannot change this.

The legislation covering Personal Licences is different from most other licensing legislation. Most have rules called 'deemed continuation'.

Example: if you had a Licence to drive a Taxi and it expired tomorrow, you could apply for renewal today and your Licence would stay in force. You could still drive a Taxi for the weeks that it took the Council to decide whether or not to grant the renewal, even though the "Expiry Date" on your Taxi Driver's Licence had passed.

In Groups B, C & D: Personal Licences are not like that, so you need to apply for renewal early. Do not leave it to the minimum period of three months before your "Expiry Date".

There is a special rule for Group A. The Scottish Government made this rule. The Board cannot make rules like this.

If you are working, you should tell your employer, because it might be a condition of your employment that you have a Personal Licence. It won't be illegal for you to sell alcohol so long as you are supervised by someone else who does hold a Personal Licence, but you can no longer supervise other staff.

If you are the "Designated Premises Manager", you can't continue in that position. The holder of the Premises Licence has 6 weeks to apply to the Board to vary the Premises Licence so as to appoint someone else (someone who does hold a Personal Licence) to that position. If there is no variation application within 6 weeks then it is illegal for anyone on the Premises to sell alcohol, and the Police might close the Premises down.

If you are later granted a Personal Licence then the Premises Licence Holder could apply to the Board again, so as to re-appoint you to "Designated Premises Manager", but you could be nominated again only if the Premises Licence had already been amended to nominate someone else.

If you used to apply for Occasional Licences by being a Personal Licence Holder, you couldn't do this again if your Personal Licence had expired (unless you were in Group A and you applied for an Occasional Licence before 1 March 2020).

Can I apply for RENEWAL after the date 3 months before my "Expiry Date"?

No, because it would not be a RENEWAL you would be asking for. The Board could not accept your application as requesting a RENEWAL of an existing Licence.

If you apply later, the Board will accept your Application as requesting the GRANT of a new Licence which would have effect from the "Expiry Date" of your old Licence, but your Application can only be granted if you have the right Training Certificate. You could not use a "Refresher Training" Certificate.

Why is this?
<p>There are different rules about:</p> <ul style="list-style-type: none">• applying for the renewal of a current Licence and• applying for a grant of a new Licence. <p>If you apply for <u>renewal</u>, you can use up to <u>four</u> different types of Certificate (see "What Training Qualification do I need?" below)</p> <p style="text-align: center;">BUT</p> <p>if you apply for <u>grant</u>, you can only use <u>one</u> of these:</p>

- **The Scottish Certificate for Personal Licence Holders**

and you cannot use the other three:

- **Scottish Certificate for Personal Licence Holders (On-Sales)**
- **Scottish Certificate for Personal Licence Holders (Off-Sales)**
- **The Scottish Certificate for Personal Licence Holders (Refresher)**

So if you only have one of these three, the Board cannot grant your Application.

Even if the Board accepts a late Application and treats it as requesting the grant of a new Licence, there is no guarantee that the Board will have made a decision on the new Application before the "Expiry Date" of your current Licence passes.

Even if you apply for renewal before the 3-month date, you are still risking your current Licence running out before the Renewal Application is dealt with.

How much time should I allow for the Board to deal with my Application?

Although the minimum time you must allow the Board is 3 months before the "Expiry Date", this is the legal minimum, and in practice you should allow much more time.

During 2019 Boards all over Scotland will be dealing with thousands of Personal Licence Applications. Many people will be wanting renewals and grants at the same time as you. This is because many Personal Licences were granted in 2009 (when the Licensing (Scotland) Act 2005 became effective) so all these Licences expire in 2019.

What Training Qualification do I need?

There are three things that a training qualification is needed for. The rules on what training qualification can be used depends on what you want to do:

[1] Apply for a Grant of a Personal Licence (in the Scottish Government statement set out below this is called an "Application under section 74")

[2] Apply to Renew a Personal Licence (in the Scottish Government statement set out below this is called an "Application under section 78")

[3] Do 'Refresher Training' (in the Scottish Government statement set out below this is called "regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013")

The qualifications needed are set by Regulations. The Regulations for [1] and [2] are the "Licensing Qualification (Scotland) Regulations 2007" (SSI 2007/98). The Regulations for [3] are the "Personal Licence (Training) (Scotland) Regulations 2013" (SSI 2013/261).

Scottish Government statement made on 4 October 2018:

"Accredited Qualifications for Personal Licence Applications

Application under section 74 of the Licensing (Scotland) Act 2005

The following qualification, whenever obtained, continues to be accredited by the Scottish Ministers as a "licensing qualification" in terms of regulation 2 of the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98), for the purpose of any application for a personal licence under section 74 of the Licensing (Scotland) Act 2005.

- *The Scottish Certificate for Personal Licence Holders*

Renewal Application under section 78 of the Licensing (Scotland) Act 2005

The following qualifications, whenever obtained, continue to be accredited by the Scottish Ministers as a "licensing qualification" in terms of regulation 2 of the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98), for the purpose of any personal licence renewal application, in relation to all licensed premises [note 1], under section 78 of the Licensing (Scotland) Act 2005.

- *The Scottish Certificate for Personal Licence Holders*
- *Scottish Certificate for Personal Licence Holders (On-Sales)*
- *Scottish Certificate for Personal Licence Holders (Off-Sales)*

The following qualification, if obtained within the five year period prior to the "Expiry Date" of the personal licence to which it relates, is also accredited by the Scottish Ministers as a "licensing qualification" in terms of regulation 2 of the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98), for the purpose of any personal licence renewal application under section 78 of the Licensing (Scotland) Act 2005.

- *The Scottish Certificate for Personal Licence Holders (Refresher)*

[note 1 - See regulation 3 of the Licensing Qualifications (Scotland) Regulations 2007 (SSI 2007/98) as relevantly amended by regulation 4 of the Licensing (Miscellaneous Amendments) (Scotland) Regulations 2007 (SSI 2007/313).]

Accredited course of training for the purposes of regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261)

The following “course of training” continues to be accredited by the Scottish Ministers for the purposes of regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261).

- *Scottish Certificate for Personal Licence Holders (Refresher)”*