

Guide to Licensing

Scotland

Updated November 2019

Welcome to the Greene King Pub Partners guide to licensing

This guide has been designed to guide you through all that you need to know about licensing law and how it affects your premises on a day to day basis.

You will also find lots of useful documents in here designed to help you run your business better.

Contact details

Your Pub

Partners BDM Name..... Phone.....

Email
.....

Your licensing board Your licensing standards officer

Name.....

Name..... Phone.....

Email
.....

Your police licensing officer

Name..... Phone.....

Email
.....

Your fire officer

Name..... Phone.....

Email
.....

Your environmental health officer

Name..... Phone.....

Email
.....

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GUIDE TO
LICENSING

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Section 1: Introduction to licensing

The licensing of pubs, clubs and restaurants in Scotland is based on the **Licensing (Scotland) Act 2005**. **Pub Partners** have lots of experience in dealing with issues that arise from running **licensed premises** and we can help you to operate your business lawfully.

This is important as the penalties for breaches of the **licensing act** can be as much as £20,000 and or 6 months imprisonment. Furthermore your agreement with us makes it an obligation for you to trade the premises in accordance with the **premises licence**. As such, you are required to understand what is expected of you by your **licensing board**, police and other **responsible authorities** and **Pub Partners**.

Remember: this folder has been designed to give you the information you need to comply with licensing law.

In the event that you have any questions or concerns about any element of this folder, please utilise the dedicated **Pub Partners** licensing helpline or speak with your **Pub Partners BDM** both of which will be able to assist you. Use us. We are here to help you

The licensing objectives

The **licensing act** establishes 5 **licensing objectives** that are the foundations of licensing and make up the basis of everything that follows in this folder. These are:

- Preventing crime and disorder
- Preventing Public Nuisance
- Securing Public Safety
- Protecting and Improving Public Health
- Protecting children and young persons from harm.

It is important to note that all 5 objectives are as important as each other. In running your business it is your responsibility to ensure that these 5 objectives are promoted.

It is the **licensing board's** duty, along with the other **responsible authorities** to make sure that you do.

Alcohol Sales and Permitted Activities

The **premises licence** sets out the "what, when and how" of what you are allowed to do.

The fundamental principle underlying the **premises licence** is that it allows the sale and supply of alcohol to take place. However, the licence also sets out the activities that are allowed to take place, as well as other rules that must be observed.

Sale and supply of alcohol

The sale and supply of alcohol applies to **on-sales** and to any **off-sales** permitted by your licence.

Other Activities

Your **premises licence operating plan** features a list of different activities and indicates those which are permitted. The full list of activities shown on within an **operating plan** are:

- Accommodation
- Conference Facilities
- Restaurant Facilities
- Bar Meals
- Receptions (including weddings, funerals, birthdays, retirements etc)
- Club or other group meetings
- Recorded Music
- Live Performances
- Dance Facilities
- Theatre
- Films
- Gaming
- Indoor/outdoor Sports
- Televised Sport
- Outdoor drinking Facilities
- Adult Entertainment

In each case, the **operating plan** will specify whether the activity is permitted, and then separately whether the permitted activity may take place outside of the licensed hours. Further restrictions on the time of these activities may be narrated in the box immediately below the list.

In addition to this, the **operating plan** may go on to list further forms of more specific activity which may occur on the premises such as charity nights, karaoke, race nights and so on.

If you ensure that you promote the 5 **licensing objectives** and stick to the terms of the **premises licence** and **operating plan**, you will be complying with your licensing obligations.

Section 2: Premises Licences

What is a premises licence?

Each premises licensed to sell or supply alcohol is issued with a **premises licence**. This licence is issued by the **licensing board** and tells you exactly what you are entitled to do in the premises.

The licence contains various parts and details that will be dealt with in more depth later in this section. However, the **premises licence** is more than a simple reminder of what you are and are not allowed to do...

A **premises licence** comes in two parts. part A is the full **premises licence (including the layout plan)** and part B is the **premises licence summary**. Both parts are critical and you need to ensure that you have the most up to date copy in the pub at all times.

The **premises licence** and **premises licence summary** are subject to legal requirements relating to where you must keep them and who can ask to see them.

- the **premises licence** must be kept in a safe place at the premises and must be available for inspection by the licensing authorities and police
- the **premises licence summary** must be displayed in the public area of the premises in a prominent position so that it can be read by members of the public. If the licence summary is more than 1 page long, all pages must be displayed.

The premises licence

The **premises licence** sets out:

- the name of the issuing **licensing board**
- the licence number
- the address of the premises
- the description of the premises
- the activities authorised by the **premises licence**
- the times during which any activities can take place
- the licensed hours
- the name, address and company number of the **premises licence** holder
- the name of the **DPM**
- whether access by children is restricted or prohibited
- full details of the **DPM**, including address and **personal licence** number

- mandatory **conditions**
- any other **local conditions** imposed by the licensing board
- the maximum capacity
- the **licensing layout plan**.

Your **premises licence** MUST be kept at the premises and you or your staff must be able to locate it and show it to a licensing officer or police officer on request.

The **premises licence** must be understood in full, in particular, the activities, hours and **conditions** shown. For more information on **conditions**, please see chapter 3.

The licensing plan

The **licensing plan** forms part of the **premises licence**, is typically to a scale of 1:100 and must contain the following information:

- the extent of the boundary of the building, any external and internal walls and, if different, the perimeter of the premises
- The location and names of any streets surrounding the premises which members of the public have access to the premises
- the location and width of each point of access to and egress from the premises
- the location and widths of escape routes from the premises
- the location of any steps, stairs, elevators or lifts
- the location and type of any fire safety and any other safety equipment
- the location of the toilets
- any area set aside specifically for the use of children and young persons
- any area on the premises to which children and young persons will have access
- location of where activities specified on the **operating plan** are to occur
- where off sales is to be offered, the location and area(s) to be used for the display of alcohol; the maximum width and height (in meters) of the frontage to be used for the display of alcohol; and the maximum linear measurement (in meters) of any displays of alcohol outside the frontage noted above.

This plan will typically have a "red line" indicating the licensed area. This is typically the footprint of the building but in some cases may be just the public parts. Some plans may show children and young person's access delineated with a separate coloured line or hatching.

Before you consider doing any works or changing anything to do with the layout, you must consult your **Pub Partners BDM**. Almost all changes to layout will require a variation to your **premises licence**.

Beer gardens or external areas are not always shown within the red line. Sometimes gardens are left off **licensing plans** altogether. This is relevant as the following will apply:

- beer gardens shown within the red line permit mean the area is within the ambit of the licence and alcohol may be sold or served there, as well as additional activities. There may be **conditions** imposed on the use of the beer garden.
- gardens shown on the plan but not inside the red line can generally be used for the consumption of alcohol but not supply – in other words, no table service, where the licence permits **off-sales**
- the licensing of external areas and beer gardens may need additional permissions such as roads consent or a tables and chairs permit depending on whether the area is privately owned and the local authority approach – check with your **Pub Partners BDM** if unsure on this point.

The premises licence summary

The summary of the **premises licence** sets out:

- the name of the issuing **licensing board**
- the licence number
- name, address and company number of the **premises licence holder**
- address of the premises
- description of the premises
- the licensed hours
- name of the **DPM**
- mandatory **conditions**
- any other **local conditions** imposed by the licensing board

The **premises licence summary** MUST be displayed in a prominent place so that it can be easily read by your customers.

ALL pages of the summary must be displayed.

Section 3: Operating plan and Conditions

Operating plan

An **operating plan** sets out the operating practices to be put in place at the premises in order to ensure the **licensing objectives** are promoted. The **operating plan** is a part of every **premises licence** issued in Scotland.

The **operating plan** is a part of your **premises licence** and not a separate document. You must operate the premises in accordance with the **operating plan**. The **operating plan** will confirm the following details:

- licensed Hours
- trading hours outside of the licensing hours
- rules for access by Children and Young Persons
- permitted Activities
- name of the Premises Manager
- premises capacity

Conditions

A **premises licence** has **conditions** listed on it which are derived from a number of sources.

This section sets out the different types of **condition** you may find on the **premises licence** and will give you an understanding of where a **condition** has originated from and its purpose.

In order for you to understand the **premises licence**, it is essential for you to understand the **conditions** attached to it.

Conditions are an obligation that you must follow. You cannot pick and choose the **conditions** that you like, you must comply with them all to the degree that is specified.

These **conditions** come in 2 types: 'mandatory' and 'local'. The **conditions** are there to set out how you manage the premises and sets out any limits or restrictions on activities. Both mandatory and local **conditions** are explained in full detail below, however the difference between them is:

- **mandatory conditions** are set by government and relate to every **premises licence** with a permission to sell alcohol in Scotland
- **local conditions** are those that have been on the local licensing board at the time of grant, or subsequent variation of the licence.

Breach of licensing **conditions** can result in a fine of up to £20,000 and or 6 months in prison.

General points about conditions

When a licensing board attaches a **condition** on to a **premises licence** it should:

- be clear and easy to understand
- be precise and enforceable
- be tailored to the individual type, location and characteristic of the premises.
- not relate to matters regulated under another law such as planning, building regulations or food safety

When you go through the **conditions** on the **premises licence**, take time to think about them in light of the above criteria. If you think they do not conform to these objectives, then it may be that the **condition** needs changing/removing.

Should you wish to change the **conditions** on your **premises licence**, you will need to speak to your **Pub Partners BDM**.

Mandatory conditions

These **conditions** are established in law and apply to every alcohol **licensed premises** equally no matter what the nature and style of your offer is.

A copy of the full list of **mandatory conditions** is included in the appendices.

The mandatory **conditions** can be changed at any time by the government and the latest version may not always be shown on your **premises licence**.

Local conditions

Local conditions are specific to each **premises licence** individually and will change from licence to licence. You will need to carefully read the **conditions** on the **premises licence** to ensure that you understand them.

These **conditions** may relate to any number of matters however many licensing boards in Scotland have a "standard" list of **conditions** which are imposed where the licence seeks a certain activity or right. For example, many licensing boards have a standard list of **conditions** which they attach when the licence features the use of a beer garden, or requires access by children and young persons.

At the end of the day, they have the same force in law as each other and they must be complied with. It is essential that you and your management team understand and comply with the **conditions**.

Types of condition

Whilst licence **conditions** are ultimately supposed to support the five **licensing objectives**, it is probably more helpful to think of them in terms of what they impose on you. They broadly fall into the following categories:

- **conditions** restricting activities
- **conditions** enforcing an obligation
- **conditions** requiring an action.

Below are examples of the different types of **condition** that you may find on a **premises licence**.

Conditions restricting activities

These **conditions** seek to restrict the activities you can provide or the times you can provide them outside of the normal hours of operation. Examples include:

- the back garden will be closed to the public at 10.00 pm
- no adult entertainment
- no live music after 12midnight

Conditions enforcing an obligation

Conditions that enforce obligations make it your duty to implement measures at the premises whilst trading or during certain times.

- **doorstaff** will be employed from 8pm on Friday and Saturday nights
- an incident log will be kept and all incidents will be noted in it
- a refusals book must be kept and maintained

Conditions requiring an action

Conditions requiring an action oblige you or your staff to carry out certain activities or measures in specified circumstances.

- toilet checks will be carried out on at least hourly intervals and a record kept of each check
- during any live performance the **DPM** will ensure that noise from the entertainment cannot be heard when standing outside the nearest residential premises
- a search policy will be implemented and at least 1 in every 20 customers will be searched on entry between 10pm and close.

When going through the **conditions** on your licence, ask yourself:

- am I being asked to do something and if I am who will actually do it?
- do I need to let staff know about this **condition** or provide training?
- will I have to provide materials to staff to ensure that the **condition** is complied with (log books etc)?
- do I need to put up signs or other materials in order to comply (**challenge 25** notices or taxi numbers etc)?

Whether the **conditions** are added as a result of a variation or **review hearing**, you will need to make sure that you understand what is being asked of you. If in doubt, speak to your **Pub Partners BDM** to seek clarification.

Please note that CCTV conditions are very common. If you have CCTV, you will need to register with the information commissioner. Please see the appendices for further information.

Activities in external areas

Whether you are permitted activities such as live music or entertainment in external areas will be catered for in the **operating plan**. If the **operating plan** does not make it clear that these activities can occur in an external area, you must not provide them and where there is any doubt speak to your **Pub Partners BDM** to seek clarification.

CCTV and GDPR

GDPR

Since May 2018 and the introduction of the General Data Protection Regulation ('GDPR'), anyone who either holds or deals with the data of another person has been required to ensure that it is dealt with in line with these new GDPR regulations. Data can include:

- employee records (which you are allowed to hold by law)
- customer data, such as email addresses, phone numbers or addresses
- CCTV images of individuals

Data can only be held in the following circumstances:

- where the individual has consented
- you have a legal obligation to hold the data
- where the processing of the data is necessary for your legitimate interest

Data controller

If you process data (outside of very limited exemptions), you must register with the ICO as a 'data controller'. This includes where you have CCTV that records and stores images of customers on your premises. The registration is quick and simple, and details can be found at: www.gov.uk/notification-to-process-personal-data

CCTV

CCTV is regularly found in licensed premises and often is required by conditions in the premises licence. If you have CCTV, you will be required to register with the ICO as set out above. CCTV can be provided under both the legitimate interest ground (if you do not have a condition on your licence requiring you to have it) on the basis that

it is there to protect staff and customers, or the legal obligation ground (if it is required by condition). In either circumstance, there are requirements that you must comply with:

- you must have signs at the entrance to the premises notifying customers that CCTV is in operation and that customers have the right to speak to the manager in relation to the CCTV policy in place.
- you must draw up and implement a CCTV policy that sets out what data you have and how you process it. A draft policy is included in section 13.
- your policy should set out that when police are investigating or preventing a crime or apprehending or prosecuting an offender, then you are obliged to assist them by allowing them to view CCTV or download and remove it. However, the police must be able to justify their requests for CCTV images to be disclosed or removed. You must also ensure that as the data controller, you know and have a record of who has taken the data and for what purpose. This should be recorded.

Other data

You may well hold other data, such as email addresses and phone numbers from customers booking tables or as part of a mailing list. Any data you hold must be used only for the purpose which it was collected, unless you get consent to use it for other purposes. For instance, if you have an email and address for a customer who has booked a table, unless you have that customer's express permission, you cannot then add that data to your mailing list.

Right to be deleted/ right to inspect data held

There are rights under GDPR for an individual to ask for any data you hold on them to be deleted. Unless there is good reason not to (for instance, you are holding CCTV images on the basis that the individual was involved in criminal activity at the premises), then this right must be respected, so long as they are able to identify what data they want you to delete and the request is reasonable. For instance, asking you to delete their name and address from a mailing list would be reasonable, whereas asking you to delete any CCTV you hold with them in it would not be. Where you cannot comply, you must be able to explain to the individual why you cannot do so.

Likewise, an individual has the right to view any data you hold relating them. Where this would expose other people's data to the person making the request, such as showing CCTV of the premises when other people are in shot, you must be mindful of the other parties' rights to not have their data disclosed. In that case, unless you can pixelate or otherwise pause and zoom in on a still image of the person requesting to see their own data, you are permitted to refuse such a request as being disproportionate and breaching the privacy of others.

If in doubt, the Information Commissioner's office is a good source of advice as to what can and cannot be disclosed. They can be found at: <https://ico.org.uk/>

Minimum Unit Pricing

Minimum Unit Pricing (MUP) is a condition of all premises licences both on and off sales. Whilst it by and large impacts the most on the off sales trade, it is vital that you understand the concept and know how to calculate the minimum price at which you can sell an alcohol product. MUP applies to alcohol you sell both on and off the premises.

MUP sets a price below which alcohol cannot be sold. It is designed as a measure to tackle Scotland's alcohol related health harms.

The Scottish Government has set the minimum price per unit at 50p. It is important that you note that this price may change in the future.

You calculate the MUP of an alcohol product with the following calculation:

The price per unit (£0.50) x the strength of alcohol (ABV) x the volume in litres

It is important to note that you round up to the nearest whole number, for example, £4.222 is round up to £4.23.

Examples:

Pint of beer

| Price per unit | | ABV | | Volume | MUP |
|----------------|---|-----|---|----------|-------|
| 0.50 | X | 4 | x | 0.568261 | £1.14 |

Bottle of wine

| Price per unit | | ABV | | Volume | MUP |
|----------------|---|-----|---|--------|-------|
| 0.50 | X | 12 | x | 0.75 | £4.50 |

It is important that you consider MUP if you are reducing the price of any of your products or if you sell alcohol for consumption off the premises. MUP should also be included in any staff training programme.

Section 4: Amending a licence

The **premises licence** determines what you can and can't do. As such, there may be times when you want to change something at the premises. This could be:

- change of pub name
- change of **DPM**
- change of **licensing plan** layout
- change of hours
- change of **permitted activities**
- change of **conditions**.

With the exception of changing of the **mandatory conditions**, it is possible to seek any of the above but you will need permission from the **licensing board** to do so. There are different requirements depending on what you are seeking to do.

There are also a variety of different application types. These are:

- administrative changes
- change of **DPM**
- **minor variation application**
- **major variation application**
- **new premises licence** application.

Pub Partners hold the **premises licence** and any applications must be made by through the **Pub Partners** licensing team. You are not permitted to submit applications outside of this process.

Please speak to your **Pub Partners BDM** should you need to make any changes to the **premises licence**.

Administrative changes

There are certain small changes that only require notifying to the **licensing board**. These include:

- change of registered address of the **premises licence** holder
- change of the address of the **DPM**

These changes require the original **premises licence** to be returned to the council, along with a small administrative fee being paid. Remember that if the **DPM** has changed their address, then the **DPM** must also advise the licensing board separately to update their **personal licence**.

These notifications must be lodged with the board within one month of the change.

Changing the DPM

See section 6 for further information about the role of the **DPM**.

There is a specific process for changing a **DPM** and this can be undertaken so that the change has immediate effect. If you wish to change the **DPM** you will need to speak to your **Pub Partners BDM** about this and send the appropriate paperwork to the **Pub Partners** licensing team.

To change a **DPM**, the proposed **DPM** will need to complete a **DPM** consent form (accompanied in this licensing folder). The consent form must be completed by the incoming **DPM**, not the **DPM** who is leaving.

Should you require a further copy of the form, this can be provided to you through your **Pub Partners BDM** or the **Pub Partners** licensing team.

The proposed **DPM** will need to be able to provide the following information:

- full name
- home address
- date and town of birth
- **personal licence** number, issuing authority and expiry date.

The proposed **DPM** will need to sign and return the completed form back to the **Pub Partners** licensing team in order for the application to be submitted.

The Licensing (Scotland) Act 2005 requires **Pub Partners** to advise the licensing board within 7 days if the named **DPM** has left; and to lodge an application naming the new **DPM** within 6 weeks. It is crucial that these deadline are not missed. Failure to observe them will result in alcohol sales having to cease.

It is illegal for premises to operate without a **DPM**. Therefore if your **DPM** leaves suddenly or cannot undertake his responsibilities for some other reason, and the above deadlines are missed you must cease alcohol sales immediately until an application to change the **DPM** has been received by the licensing board before you can sell alcohol again.

Minor variations

Minor variations were created to allow **premises licence** holders to make simple changes to licences without the time and expense of the full **variation application** process.

The idea is that where you are seeking to make a change to the **premises licence** that would not ordinarily be considered to have an affect on the **licensing objectives** this should be as easy as possible to do. As such, **minor variations** are used for the following:

- changes to **licensing plan** layout that do not affect the **operating plan**
- Reduction of licensed hours
- Restriction of access by children or young persons

- Change in premises name
- Reduction of capacity
- Cessation of live/recorded music above 85 decibels
- A variation to provide that, when fully occupied, more customers are likely to be seated than standing

There is a fee to be paid on making a **minor variation application**. You will find a table of fees in the appendices.

Making an application

Before making an application it is often necessary to check with the council whether they will accept a **minor variation application** or require a full **variation application**. The **Pub Partners** licensing team will be able to advise you on this.

Should a **minor variation application** be appropriate you will need to do the following:

- obtain approval from your **Pub Partners BDM** for the **minor variation** to be made and agree exactly what is being applied for
- sign and return the quote letter or reply to the email you will receive from the **Pub Partners** licensing team

Time limits

A minor variation cannot be refused. The only question then is whether the application is a proper minor variation. If it is, it will be granted. There is no public consultation or right to object to a **minor variation application**.

Please see the **minor variation** flow chart in this section for full details on the process.

Major variations

A **major variation application** is required for anything else not included in the rest of this section.

This may include:

- addition of **permitted activities**
- removal of **conditions**
- increased in the licensed hours
- substantial changes to the **licensing plan** layout.

There is a fee to be paid on making a **variation application** based on the non-domestic rateable value of the premises. A table of fees can be found in the appendices.

Making an application

Major variation applications can be expensive. There is an application fee and the cost of making the application.

Some variations may receive **representations** but even if there are none received, all major variations require to be dealt with at a licensing board **hearing**. This will significantly add to the cost of the application.

In all cases, you need to consider whether it is financially worthwhile making the application.

To make a **variation application**, you will need to do the following:

- obtain approval from your **Pub Partners BDM** for the **variation application** to be made and agree exactly what is being applied for
- sign and return the quote letter or reply to the email you will receive from the **Pub Partners** licensing team
- display a copy of the **site notice** which will be sent to you by the **Pub Partners** licensing team for the period required
- return the completed **certificate of display** to the **Pub Partners** licensing team.

Time limits

As the Licensing (Scotland) Act 2005 requires all major variations to go to **hearing**, ultimately the application will be decided on that date. The dates for display of the site notice are set by the licensing board so after an application is lodged, it could be weeks before the site notice is issued.

Major variations can take several months from the date that the application is submitted to be granted in some areas and you should factor this into your timings, particularly when you are looking to change the **licensing plan** layout.

You cannot operate the proposed changes until the application is granted. If you were to do so it would be a breach of the **premises licence**.

If representations are received

If **representations** are made against the application, there will be the opportunity to try to negotiate with the objector to try and reach a compromise, but as all major variations go to a **hearing** this cannot be avoided even if the objector withdraws their **representation**.

Your **Pub Partners** licensing team will be able to advise you of any **representations** received and in relation to ongoing negotiations.

At a hearing

At any **hearing**, **Pub Partners** will be represented by a member of **Pub Partners** licensing team, as well as having your **Pub Partners BDM** to support you. The licensing board will expect the application to be presented and then discuss any reports or **representations** received. There are a range of options before the **licensing board** in terms of variation applications. These are:

- to grant the variation as applied for
- to refuse the variation
- to grant the application but in an amended form as a result of discussion at the **hearing**

A licensing board is not entitled at a variation **hearing** to do any of the following:

- suspend the licence
- revoke the licence
- issue a written warning

A flow- chart can be found on in this section that sets out the process for making a full **variation application**.

Appeal

Should a **licensing board** make a decision that is felt to be unfair, it is possible to **appeal** that decision. However, there are a number of factors relating to **appeals** that you will need to be aware of:

- **appeals** can be very expensive and take a long time to complete
- you could be liable for the costs of the **licensing board** if you lose the **appeal**
- you will not automatically be entitled to recover your costs from the **licensing board**, even if you win
- the **appeal** process takes place in the sheriff court and is subject to all the normal procedures of court, such as giving evidence under oath and cross-examination

Appeals need to be lodged within 21 days of receipt of the statement of reasons, if one has been requested. You will need to speak to your **Pub Partners BDM** and the **Pub Partners** licensing team should you want to **appeal**.

Don't forget that you need to have the proper planning permission in place before you can trade any additional hours or a new **licensing plan** layout.

Planning permissions also have **conditions** on them. It is worth checking whether you will need to change you planning permission at the same time as looking at your **premises licence**.

Section 5: Children and young persons in pubs

In Scotland, a "child" is defined as someone up to age of 15. A "young person" is defined as someone who is 16 or 17. There are certain rules or relaxations which apply to young persons but not to children so it is important to understand the distinction.

General

There is no overarching set of rules concerning access by children and young persons under the Licensing (Scotland) Act 2005. Instead, it is left to the local licensing board to agree the rules for each licence. In other words, your individual **premises licence operating plan** will contain the rules concerning access for your own premises. Rules will therefore vary from premises to premises and area to area.

Remember that the rules for access by children and young persons are laid out in the **premises licence operating plan** meaning it is a legal requirement for you to ensure that those rules are followed.

All **premises licenses** in Scotland specifically require an age verification policy- typically referred to as **challenge 25**. The **challenge 25** policy should contain the following requirements:

- signs at the doors and on the till fronts stating which policy is being operated
- a refusals log to be kept which records all refusals of sales and the reasons (no ID, fake ID etc)
- training of all staff in the challenge policy and a record kept to show that each member of staff has completed the training
- re-training of staff on a periodic basis (every 6 months, for example).

Remember, you do not have to permit children into your pub if you don't want to. You have a general right to exclude persons from your premises, so long as you do not do so on the grounds of race, sexual orientation or other discriminatory factors.

Children, young persons and alcohol

As a general rule, children and young persons are not entitled to drink alcohol on **licensed premises**.

The exception to this is where a 16 or 17 year old is taking a table meal. In this case, the young person may drink beer, wine or cider with a table meal on **licensed premises** where accompanied by an adult aged 18 years or over. This only applies when the alcohol is purchased by the adult. Such consumption is at your discretion and you can decide not to allow this (as long as such a decision is not applied in an arbitrary or discriminatory manner).

When having a table meal the old law allowed children to purchase their alcohol. Now, they are only allowed to drink it. It must be purchased by the accompanying adult.

Children working in pubs

There is no general restriction on children or young persons working in pubs per se. As such, under 18's could work in the kitchens, as waiting staff and so on. However, there are rules concerning staff making sales of alcohol. The **licensing act** states that no one under the age of 18 can serve or supply alcohol with only two exceptions:

- where the young person is waiting staff and serving the alcohol to a customer at a table as part of a meal
- where the young person is working in an off sale premises, they may conduct an alcohol sale but only where it has been approved by a responsible person (ie a senior member of staff)

Do remember that you have obligations to children and that one of the **licensing objectives** is the protection of children from harm. It is for you to judge whether in the circumstances you should be allowing children to work in your premises.

Offences

The following are some of the most common offences that can be committed by licence holders, licensees or their staff relating to children under the **licensing act**.

A full list of offences relating to children can be found in the appendices.

Serving alcohol to anyone under 18

It is an offence for any person to supply alcohol to an individual aged under 18 anywhere, not just on **licensed premises**.

It is a defence if the person believed that the individual was aged 18 or over and either he had taken all reasonable steps to establish the individual's age or nobody could reasonably have suspected from the individual's appearance that he was aged under 18.

A person also commits an offence if he allows the sale of alcohol on **licensed premises** to an individual aged under 18. So, if it can be proved in court that your employee sold alcohol to someone under age, even though you had no knowledge of the actual sale, you might be held liable. Actual knowledge of the offence is not necessary. This means you could be found guilty of the offence even if it was committed by another person and you were unaware of it!

Reviews following sales of alcohol the children

Police Scotland and the **licensing board** take a very dim view when it comes to sales of alcohol to children. At the very least, you will find yourself having to implement measures to ensure that there are no more sales. This may include additional training for your staff, improved till systems and so on.

It is important that you note that your contract with Greene King may be jeopardised if you are found to have sold alcohol to young persons.

However, if your licence is **reviewed**, the **licensing board** will consider suspending or revoking your licence if they feel that you have not given proper training to your staff or if you have looked the other way.

As part of your management process, all staff will need to be trained on the law relating to children and any **conditions** on the **premises licence** relating to prevention of underage sales. You will also need to make sure you comply with **conditions**, including displaying the relevant signs and till prompts.



Section 6: Personal licence holders and the role of the DPM

Personal licences

A **personal licence** is nationally recognised and permits the holder to become the **DPM** at any premises licensed to sell alcohol in Scotland. A **personal licence** is obtained by passing a nationally certified course and applying to your local licensing board.

Once you have completed the course, it is worth obtaining a **personal licence** immediately, even if you are not intending to be **DPM**.

The **personal licence** is issued as a paper licence although some licensing boards will also issue an ID card that is easy to carry and useful in proving you hold the relevant qualifications.

Once the course has been successfully completed an applicant must make an application to the licensing board for a **personal licence**.

The police can make an objection against an application for a **personal licence** on the basis of offences which must be declared in the application. The offence must be a **relevant offence** in order for the police to be able to object.

A full list of **relevant offences** can be found at the back of this folder in the appendices.

The police are also entitled to object if a person has a conviction and also based on evidence they can present which suggests the grant of the licence would be inconsistent with any of the **licensing objectives**.

Not all criminal offences will prevent the applicant from holding a **personal licence**. Even if there are **relevant offences**, the police do not have to object. If they do, the matter will be decided at a licensing **hearing**.

The reason that you need a **personal licence** is so that you can authorise the sale of alcohol or become a **DPM**.

A **personal licence** holder is entitled to authorise the sale and supply of alcohol, whether they are **DPM** or not.

DPM ('Designated Premises Manager')

The role of the **DPM** sits at the heart of the **licensing act**. It is the means by which all sales of alcohol are properly attained. As such, the role of **DPM** is not one that should be taken lightly.

A **DPM** is required to ensure that there is always one specified individual amongst any other **personal licence** holders who can be identified as being responsible for the day to day running of the premises.

It is useful to know the following points in relation to what being a **DPM** means in practical terms:

- the **premises licence** holder is not the only person who can be the **DPM**. A leaseholder or the manager is entitled to act as **DPM**, so long as they hold a valid **personal licence**
- **personal licences** issued in England and Wales are not valid in Scotland, and vice versa
- where a **DPM** ceases to hold a **personal licence**, that premises cannot sell alcohol until a new **DPM** has been appointed or the minor variation procedures described above have been followed
- where a **DPM** leaves the premises permanently or notifies the council that he is no longer the acting **DPM**, this activates a 6 week "grace period" in which an application naming a new **DPM** must be lodged
- the **DPM** does not have to be present on the premises at all times but they must be in day to day control
- a **DPM** cannot be named on any more than one **premises licence**.

Role and responsibilities

A **DPM** can authorise the sale or supply of alcohol. This authorisation can be passed down to other staff, including those who do not hold **personal licences**. Although there is no legal requirement to have this authorisation noted, **Pub Partners** use a special form for best practice and this can be found in the folder.

Changing DPM

When a **DPM** leaves the premises **Pub Partners** must notify the licensing board within 7 days from the date they left. An application naming a new **DPM** must be submitted within 6 weeks from the date they left.

If either of these deadlines are missed, the premises must stop all alcohol sales until a new **DPM** has been named (via a **minor variation application**).

Further training requirements

It is important that all personal licence holders working on the premises including the **DPM** are aware that there are ongoing training requirements relating to personal licences. Failure to comply with these requirements can have very serious consequences including the licence ceasing to have effect. If this happens to a personal licence holder who is the premises manager then a new premises manager will need to be nominated.

Refresher training

A personal licence holder must sit and pass a refresher training course prior to the five year anniversary of the grant (or renewal) of their personal licence. Proof of completion must be sent to the licensing board that issued the personal licence within three months of the aforementioned five year anniversary.

Failure to comply with this requirement means that the personal licence will cease to have effect at the expiry of the three month period further to the five year anniversary.

Renewal

A personal licence has a ten year life span and therefore must be renewed every ten years. The renewal process is not straightforward and therefore, personal licence holders should take care to make sure that they understand the process.

A renewal application must be lodged no earlier than twelve months prior to expiry and no later than months before expiry.

Failure to comply with this process will see the personal licence expiry on the date stated on the licence.



Top 10 tips for the DPM

- correctly display the **premises licence summary**
- keep a certified copy of the full **premises licence** in a safe place on the premises
- know the hours, activities and **conditions** on the **premises licence**
- keep and update the written authority given to staff to serve alcohol
- make sure all staff have undertaken the mandatory 2 hours staff training course and have signed the declaration
- ensure your **challenge 25** scheme is properly advertised and that staff understand their responsibilities. Remind them regularly of what is expected
- tell the **licensing board** that issued your **personal licence** if you change address within one month of the change
- good liaison with neighbours and other premises operators (through pub watch) will keep you ahead of any issues affecting your premises
- complete the due diligence and risk register logs and check them regularly to ensure that your staff are doing the same
- ensure you contact your **Pub Partners BDM** to discuss any adverse incidents or issues

diarise key dates in the life cycle of your personal licence namely when you need to have completed and submitted your refresher training certificate and when you need to renew your licence

Section 7: Extended hours applications

What are extended hours applications?

An **extended hours application** permits the premises to open later than normal, typically for a special event to be catered for on the premises such as a reception or local or national event of some sort.

Limits on extended hours applications

In general, there is no limit to the number of **extended hours applications** which can be applied for.

However, a **licensing board** will look suspiciously on multiple applications which appear to suggest the premises is using them as a method to trade later on a regular basis. This is because the applications are supposed to cater for one-off events.

In some **licensing board** areas a premises is entitled to have a certain number of extensions in a calendar year.

Applicants

The applicant for the **extended hours application** must be the person who holds the **premises licence**. Therefore the application should be made in the name of the **Pub Partners** company that holds the **premises licence**. **Pub Partners** have written to all Scottish licensing boards to confirm they are prepared to authorise **extended hours applications** lodged directly by the **DPM**.

Deadlines for applying for extended hours

Most **licensing boards** require an application to be lodged a certain number of days before the event is to take place. This ranges from 14 to 28 days depending on licensing board area.

The **licensing act** does allow applications to be lodged with shorter notice, but the **licensing board** can reject these if outwith the timescales they usually require. In general terms, shorter notice periods are permitted for funeral purvies.

How to apply

An application for extended hours must be made to the **licensing board** who issued the **premises licence**.

The full details can be found by contacting the **licensing board**.

Objections to extended hours applications

Anyone is entitled to object to an application for extended hours. Normally a report will be filed by the police and the local LSO.

The application may be taken to a **licensing board hearing** but this is rare and in normal practice the board will either grant or refuse the application taking the comments received into account.

In many areas a decision is not taken until the day before or the day of the event. It is not uncommon to have to wait for a decision until the evening of the event itself.

Section 8: Outside areas

The use and management of outside space can be as important as inside. Customers using outside space can unintentionally cause nuisance to neighbours.

As such, it is important to understand and make proper plans for how you will best use and manage any outside spaces. These can take the form of:

- gardens
- frontages
- car parks
- terraces
- decks
- patios
- pavements

In addition, different spaces are often used for different purposes (often at the same premises). Again, by understanding what areas are being used will assist in ensuring they are properly managed. Uses can include:

- customer seating
- dedicated smoking areas/ shelters
- car parking
- queuing
- standing areas for customers drinking/ smoking etc
- waste disposal and other back of house functions.

Each requires its own consideration in terms of making sure that you have the correct permissions or that the areas are properly marked on your **licensing plan**.

Remember that your outside space may need to be shown on your **licensing plan** and in some circumstances may need to be licensed.

When does an outside space need licensing?

If you want to use an external drinking area, you will need to ensure that your **premises licence** permits the activity. Usually, areas that are licensed are shown on **licensing plans** by a red line going around these areas. For instance, all public areas (with the exception of the toilets) will be included in the red line for **licensable activities**.

Therefore, if you want to use an external area you need to ensure that the outside area is within the red line on the **licence plan**. If you want to add an area you will need to submit a **variation application** (see section 4). You may also require planning permission for the outdoor area from the council in advance of submitting such an application.

If you want to use the area on a temporary basis, you can seek an application for an **occasional licence**. The process for this mirrors that of **extended hours applications**.

Considerations for use of outside spaces in general

Below is a list of some of the things you might want to think about regarding your customers using outside space.

- **conditions on the premises licence:** Are there restrictions on where or when outside spaces can be used?
- proximity of neighbours. Are there neighbours very close by who will be affected by the use?
- are the spaces properly supervised by staff?
- are any benches or other furnishings secure and safe?
- are customers using any particular space likely to block access for pedestrians/neighbours?
- is the use of the space likely to cause any kind of disturbance that is not customer related (bad smells from bins or air extraction from kitchens, or noise from refrigeration devices etc)?
- is the use of the space by customers likely to cause a disturbance to others?
- are their notices displayed asking customers to respect the neighbours?
- If you are using an occasional licence, then you need to consider whether you require a temporary public entertainment licence to authorise any entertainment. You should seek advice from your **pub partners BDM**.

Being able to answer some or all of these questions will assist you in making sure that you are prepared and therefore better positioned to manage the areas.

Not all noise from customers outside is a nuisance. However, you do have a responsibility to manage your customers so as to ensure that they behave in a reasonable manner.

Section 9: Pavement licences

A **pavement licence** is distinct from the **premises licence**. A **pavement licence** may be necessary if you want to put tables and chairs outside on a public highway such as a pavement.

Pavement licences are **NOT** required for the following:

- putting tables and chairs in your garden or within the boundary of your land
- using privately owned land as an outside space.

However, if you want to place tables and chairs in outside space owned by your local authority, you will need to obtain permission from them. This usually requires an official **pavement licence**, sometimes known as a "tables and chairs permit", "roads consent" or "street café licence".

Some local authorities do not have official licensing systems for tables and chairs, however, you will normally need to notify them that you intend to do this and seek their permission before going ahead.

Also, some authorities require planning permission to be obtained for use of the area.

Pavement licences go further than simply being for tables and chairs. You may require one for any or all of the following:

- tables chairs and benches
- barriers
- space heaters
- planters
- umbrellas and 'jumbrellas'.

Pavement licence applications

A **pavement licence** application is made to the local authority's highways department. However, lots of local authorities have effectively given the running of the application process to either their planning or licensing officers. Each authority has slightly different application process and requirements. However a typical application will require you to provide some or all of the following:

- a scale plan of the proposed area showing the layout of the tables and chairs, heaters, planters etc
- design drawings of proposed furniture, barriers- including any advertising, planters etc. Measurements are often requested
- copy of public liability insurance
- copy of the **premises licence**
- copy of the planning permission that shows that the area has permission to be used for tables and chairs
- fee

- proposed hours of operation.

Many local authorities set the hours for use of pavement areas. This can include times where tables and chairs will not be allowed. Often this can be a lot earlier than the hours on the **premises licence**, but that does not mean you can keep the tables and chairs out longer than your **pavement licence** allows.

Many local authorities also require details and pictures of the furniture you are proposing to use, along with the size of each piece of furniture (dimensions). In many cases they will also dictate what they expect the furniture to look like or what materials can be used. It is important therefore not to buy the furniture until such time as the local authority have approved it.

Grant of a licence

Like a **premises licence**, the local authority asks for comments from various parties who may be affected by the grant. Depending on the authority, if objections are received, the matter can be referred to a **hearing** or rejected. If it is referred to a **hearing**, you will usually be told that objections have been received but there is no obligation to either send them to you or for you to appear at the **hearing**. Some local authorities allow the applicant to respond in writing to any objections and some allow you to attend and speak, but many don't.

Conditions

Like a **premises licence**, most **pavement licences** come with a list of **conditions**. Failure to comply with the **conditions** will result in revocation of the **pavement licence**.

Fees

The fees are set by the local authority. In most cases, the fee is based on the number of tables, chairs and other things you wish to put on the pavement. However, some local authorities have flat fees and some base fees on the hours you intend to operate the **pavement licence**. Some authorities combine all of the above in calculating their fees.

Renewals

Pavement licences are only temporary permissions. Each local authority determines how long the licences last. This is usually anywhere from 6 months to 3 years. At the end of the permission you must apply for a new permit. Often there is a simplified renewal process, but it does not mean that the application will be automatically granted. Any complaints or problems caused during the previous 12 months will be taken into account in determining the renewal.

Breach of a **pavement licence** is a criminal offence, for which you can be prosecuted.

If you want to consider obtaining permission for a **pavement licence**, speak to your **Pub Partners BDM**. Remember that a **pavement licence** simply allows you to use that space for tables and chairs, but not the sale or supply of alcohol. If the area is not licensed, then it will need to be covered by **occasional licences** or if a more permanent activity, through a **major variation application**.



Section [NEW]: Gambling Machines

Gambling machines are regulated under the Gambling Act 2005. The Gambling Act has its own licensing objectives and rules for controlling gambling. If you have gambling machines in your premises, you will need to understand the distinctions and rules relating to these machines.

Licensing objectives:

There are 3 gambling objectives:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

Gaming Machine Licence

What are the machine entitlements?

Qualifying alcohol licensed premises are entitled (under Automatic Entitlement) to provide two gaming machines of category C or D upon notification to the licensing board (Licensing Board). Automatic Entitlements are only applicable to alcohol licensed premises, where there are bar facilities available on the premises for the sale and consumption of alcohol. In order to site more than two category C or D gaming machines, an alcohol licensed premises gaming machine permit must be acquired from the relevant Licensing Board by application. It is then at the Licensing Board's discretion to consider the application and issue a permit. Where a gaming machine permit authorises the making available of a specified number of gaming machines in particular premises, this will effectively replace, and not be in addition to, any Automatic Entitlement to two machines.

A copy of the permit must be available for inspection at location if requested.

Where an Licensing Board has a concern about the suitability of the premises or licence holder to offer machine facilities to the public, the Licensing Board has, in certain circumstances, the power to dis-apply and remove the Automatic Entitlement

The licensing authority which issued the permit may cancel it, or may vary the number or category (or both) of gaming machines authorised by it, if they think that:-

- It would not be reasonably consistent with pursuit of the licensing objectives for the permit to continue to have effect.
- Gaming has taken place on the premises in purported reliance on the permit but otherwise than in accordance with the permit or a condition of the permit.
- The premises are mainly used or to be used for making gaming machines available.

- An offence under this Act has been committed on the premises.

Before cancelling or varying a permit a licensing authority shall:

- Give the permit holder at least 21 days prior notice of the authority's intention to consider cancelling or varying the permit,
- Consider any representations made by the holder, and
- Hold a hearing if the holder requests one.

Machine Gaming Duty (MGD)

Any location operating gambling machines and SWPs must register for and pay MGD to HMRC, You can register via HMRC web site or download form and send to HMRC.

Gaming Machine requirements

Machines made available for use must be able to be supervised to stop anyone under the age of 18 using the machine.

Machine should display or have the following information available on them:

| | |
|---|------------------------------------|
| Machine category (either C or D) | Supplier details |
| Return to player percentage | ID plate (for machines after 2007) |
| No under 18s sign (category C only) | Stake to play and maximum payout |
| Signposting for gambling support services (eg Gamble Aware) | |

It is the responsibility of the business owner to ensure the machine meets the regulatory requirements prior to making them available for use to the public. If a machine fails to meet the requirements above, it is the business owner and not the machine supplier that is liable for this failure.

Crane Grab machines

Crane grab machines which have an element of chance are category D gaming machines. For further information on these machines see:

- [Skill with prize machines](#)
- [Non-complex cat D gaming machines](#)

Sourcing machines

All machines must be sourced and maintained by a Gambling Commission licensed supplier. There are certain maintenance and repair activities which may need to be

carried out on a day-to-day basis, for which additional licences or permits are not required.

Machines supplied by an unlicensed machine supplier are considered illegally supplied machines and pose a serious threat to the licensing objectives. If a machine is illegally supplied this poses a risk to the first licensing objective of keeping crime out of gambling. A machine that does not meet the regulations and technical standard requirements may also risk the fair and open licensing objective and therefore pose a risk of harm to members of the public interacting with these machines.

If you have any concerns about a supplier or wish to verify that they are licensed by the Gambling Commission you can do so by visiting the register on the Gambling Commission website or contact our confidential intelligence line (0121) 230 6655.

Machine location requirement

Below is the requirement on location of AWP's taken from the Gambling Commissions web site, <https://www.gamblingcommission.gov.uk/PDF/Code-of-practice-for-gaming-machines-in-clubs-and-premises-with-an-alcohol-licence.pdf>

- All gaming machines situated on the premises must be located in a place within the premises so that their use can be supervised, either by staff whose duties include such supervision (including bar or floor staff) or by other means.
- Permit holders must have in place arrangements for such supervision.
- All gaming machines situated on the premises shall be located in a place that requires a customer who wishes to use any ATM made available on the premises to cease gambling at the gaming machines in order to do so. 'ATM' means a machine located on the premises, which enables a person using it to obtain cash by use of a credit or debit card.

Age Verification (Over 18 only)

It is essential that staff are aware and trained to challenge customers using gaming machines in exactly the same way that they would when serving customers alcohol. Licensing Boards carry out spot checks and will take action against premises found to be letting under 18's gamble.

Recently the Gambling Commission and local authority Trading Standards have been carrying out test purchases across the country and the results to date have been very poor (90% failure rate). It is expected that they will be undertaking further testing and it would not be a surprise if action would follow thereafter to make an example of someone which could result in a licence review.

It is considered a failure to prevent under 18's using Category C gaming machines happens as soon as the money is placed in the slot, so you and your staff need to be

vigilant and Challenge and when required refuse play to anyone who looks or is known to be under age.

To date, there has been no settled means of testing. Some authorities had young people coming to the bar and asking for change, some were buying drinks first, and some were just walking in and going straight up to the machine to play.

As a reminder please look out for the following:

- Customers not buying drinks before going to play machine who could be too young to play
- Requests for change, if person appears to be under 18 ask reason and if told it is to play gambling machine obtain proof they are over 18 or refuse.

Proper supervision is key here so all players of machines need to be able to be monitored.

The same test should be applied to machines as with alcohol challenges (challenge 21 or 25) when you spot someone at a machine or getting change for the machines.

The below links are for the gambling commission quick guide and the codes of practice on ensuring machines are properly supervised.

<https://www.gamblingcommission.gov.uk/PDF/quick-guides/Gaming-machines-in-pubs-quick-guide.pdf>

<https://www.gamblingcommission.gov.uk/PDF/Code-of-practice-for-gaming-machines-in-clubs-and-premises-with-an-alcohol-licence.pdf>

Gambling in pubs (non-machines)

The rule of thumb is that gambling in pubs is only permitted where it has been expressly exempted from gambling legislation. It is helpful therefore to start from a position of thinking: If I cannot find an express permission to do it, then it is likely to be illegal. The Gambling Commission take illegal gambling very seriously and will prosecute people found to be breaking the law. The potential penalties are significant, depending on the offence. If in doubt, ask!

The Gambling Commission provides a great source of advice. They have produced a guide for gambling in pubs, which can be found at:

<http://www.gamblingcommission.gov.uk/PDF/Advice-on-gaming-in-pubs-and-alcohol-licensed-premises.pdf>

Section 10: Inspections

Officers from the various different **responsible authorities** are allowed to inspect the premises. Whilst each may have their own particular areas of expertise, any inspection will normally begin with a look at the **premises licence**.

Remember your obligations with regard to the **premises licence**

- the **premises licence summary** or certified copy must be displayed in a prominent position so that it can be read by the public
- the **premises licence** or certified copy must be kept at the premises so that it can be produced to an officer on request
- you must have a **section 110 notice** displayed confirming offences in relation to under sales.
- if you allow children and young persons into the premises, you must have a **Schedule 3 notice** confirming in which areas of the premises they are allowed
- you must keep the mandatory staff training records on site for inspection
- the layout of the premises must comply with the layout plan as attached to the premises licence

The officers that you can expect to see visit you are:

- **licensing standards officers**
- police
- environmental health
- trading standards
- fire

Licensing authorities set their own targets for visiting premises. This is usually done on a risk-assessed basis depending on the nature and style of the operation, intelligence of potential issues or previous breaches of the **premises licence**. It can also include breaches of other legislation such as food hygiene standards.

This may mean that you could face visits on a regular basis. Even if there is no regular visit, a **licensing standards officer** or police officer will certainly visit if they have concerns about a specific issue.

Rights of entry and inspection

All of the officers have the right to enter premises and request to see the **premises licence**. They have the right to inspect the premises to ensure compliance with the **premises licence** and also to check on other matters, including health and safety, food safety or kitchen hygiene. Other tests, such as drug swabs (or even sniffer dogs) can be used to check for drug use.

Staff may be asked questions during the inspection. It is important that they have received adequate training and are able to evidence how they, and therefore the premises, are compliant with the **premises licence** requirements.

You are obliged to help in any way that you can. However, let the officers know if you feel that you are being kept from your job in an unreasonable way (for instance it's a very busy Friday night or you are responsible for something requiring your immediate attention). If they ask you to remain with them, you must ask that a note is made of this so that you are not held responsible if they later claim something was not done properly on the night.

Multi agency visits

On occasion, the **licensing board** and police will team up and visit premises together. This is known as a multi-agency visit and can take some time, as each officer will have his own questions and areas to inspect.

There is a difference between an inspection and an unofficial visit.

- an inspection or official visit will be announced as such by the officers and will be conducted following a set routine. They should inform you of the process at the start and give you details of what they are looking for
- an unofficial visit by an officer may be to discuss a particular incident or to bring a particular point to your attention. These will be less formal and you should be told this at the start.

Obligations when visited

Your obligations are to co-operate with the officers and provide the documentation asked for. More generally, you or your manager will be expected to know the following:

- where the **premises licence** is kept
- the **conditions** on the **premises licence**, particularly those that require action such as toilet checks, noise checks, refusals registers, **challenge 25 policy** etc
- where the mandatory staff training records are kept
- what your policy is on prevention of sales to underage persons is
- what your opening and closing times are
- what **activities** are permitted and at what times
- who the **DPM** is and if they are not at the premises, where they are
- where the proper weights and measures or other signage is
- where the fire risk assessment is kept.

You may also be asked for any of the following if they are required by the **premises licence**

- how to operate the **CCTV** and burn images onto a removable format
- where the refusals or incident registers are kept
- what times doormen are expected to work and where the door staff register is kept
- when the garden must be closed
- where the toilet check log is kept
- where and when noise checks are undertaken
- what your policy is concerning access for children and where in the premises they are allowed to be.

After an official inspection

If you are inspected by an officer or by a multi- agency visit, they should provide you with a receipt of the visit and details of anything they claim needs to be addressed. This is usually followed up with a more formal letter of advice and any actions they expect you to take or actions they are considering.

You must not ignore any advice you are given. Make sure that you deal with any issues identified. If there are any issues, you must let your **Pub Partners BDM** know.

Follow-up actions

These will be dealt with in detail in the following chapter, but it is worth noting that the following actions can be taken if problems or breaches of the **premises licence** are found:

- informal discussion
- letter
- formal legal compliance warning letter – known as a "Section 14 letter"
- fixed penalty notice
- prosecution
- **review of the premises licence**
- **closure notice**

You must pass a copy of any document received to your **Pub Partners BDM** immediately.

Section 11: Offences and enforcement

Categories of offences

The **licensing act** creates a number of offences which, on conviction, carry various punishments, depending on the seriousness of the crime.

You need to be aware that breaches of the **premises licence**, whilst possibly leading to a **review**, can also lead to criminal prosecution. Broadly, the categories of offences that you need to be aware of are:

- failing in a duty to notify the **licensing board** of a change in circumstance (i.e. change of **DPM** address or change of premises name)
- operating outside the permissions of the **premises licence** (i.e. after hours trading or breach of **conditions**)
- offences relating to sale of alcohol to persons under 18 and children
- offences relating to drunkenness or disorderly behaviour

Within these categories, there are a number of different offences that can be committed. For instance, there are duties to notify the **licensing board** of changes to the address of a **personal licence** holder, a **DPM** or a **premises licence** holder.

A full list of offences and potential defences are provided in the appendices.

Range of punishment

The punishments for being convicted of an offence range from a fine of £200, up to fines of £20,000 and, or, 6 months in prison. The level of fine is based on the standard scale of fines.

Enforcement

There are various ways that licensing officers or police can take action if they find you are in breach of the **premises licence**. These are:

- **police intervention**
- prosecution
- **review** of the **premises licence**
- **review of any personal licence**

Interventions

Prior to bringing a **review** request, the police may ask you to attend an "intervention" meeting. This is an informal meeting between the police and the **premises licence** holder. The **DPM** and other affected parties may also be asked to attend.

The purpose of the meeting is to allow the police to comment on the issues they believe are undermining the licensing objectives. The police will usually ask for various steps to be taken and an action plan to be put in place.

An intervention is a chance to work with the police in a positive way to ensure that issues are dealt with and avoid the need to go to a full licence **review**.

It is important to note that you are not entitled to sign any document at an intervention on behalf of the premises licence holder. Your Pubs Partners BDM will deal with this.

If you are asked to attend an **intervention**, you have no legal obligation to attend but you must work the police positively. In most cases attending is the appropriate step. However, you need to speak to your **Pub Partners BDM** immediately and seek your own independent legal advice.

Prosecution

A criminal prosecution is brought by officers on the basis that they believe they have a reasonable chance of securing a conviction against you and it is in the public interest to do so. Should the decision be taken to proceed with a prosecution the matter will be referred to the Procurator Fiscal who will decide whether to proceed with a prosecution. Criminal prosecutions are heard in the sheriff court.

There is a presumption of innocence until you are proved to be guilty of committing the offence. The prosecution must prove your guilt beyond reasonable doubt. You must be able to provide evidence to show that you did not commit the offence or that you did all that could reasonably be expected of you.

Defence to a criminal charge

Not all defences are available for all charges. Ignorance of the law is never a defence to a prosecution

For some offences, there are defences available. A common defence is the defence of 'due diligence'. This defence can be used in circumstances where you have taken all reasonable steps to try to avoid committing the offence.

Another defence may be that you did not know that an offence was being committed. This is often the case where a member of staff does something illegal (an underage sale, for instance).

This type of defence requires you to have been unaware that the crime has taken place and you must be able to show that you have taken proactive steps, in advance, to ensure it does not take place.

Proper documented staff training, recorded on paper, with regular updates and written evidence of the training being provided can prove to be vital.

Just because you do not 'see' a crime, does not mean you have not committed a crime.

The legal doctrine of "vicarious liability" applies to licensing offences in Scotland, meaning the **premises licence** holder, **DPM** and others could be found guilty of an offence even without actual knowledge of it occurring.

Review

An application to **review** the **premises licence** allows the **licensing board** to look at any problems and decide if changes are required to be made to the **premises licence** in order to rectify them. Ultimately a licence can be revoked in a **review hearing**.

The **licensing board** will have regard to whether the **licensing objectives** are being promoted or undermined, and whether any **conditions** are being breached.

The **licensing board** has a wide range of powers available in a **review hearing** which include:

- Issuing a written warning
- Suspending the **premises licence**
- Varying the **premises licence**
- Revoking the **premises licence**

Who can review a licence?

Anyone can apply to **review** a licence, but **reviews** are most commonly brought by the:

- police
- environmental health
- **licensing standards officers**
- local residents.

Applications to **review** the **premises licence** are usually submitted following complaints. They are often seen as the last resort.

Once a **review** has commenced, the licensing board will set a **hearing** at which the person who has sought the **review** will be invited to speak.

Unfortunately, once a **review** has commenced, it must be dealt with by the **licensing board** unless the party bringing the **review** withdraws the application.

Why review?

There are many reasons why an application to **review** the **premises licence** may be submitted.

The most common are:

- complaints of noise nuisance from the pub
- failed test purchases
- violence, crime or disorder at the premises
- complaints about use of the pub garden
- complaints about customers coming to, or leaving the pub

- over intoxication of customers
- breaches of the **premises licence**.

Review process

Once an application to **review** the **premises licence** has been submitted, the **licensing board** will give a copy of the **review** request to the licence holder and confirm a **hearing** date.

Sometimes the **licensing board** will mistakenly serve a copy on the premises only. If you are made aware of a **review** application you must let your **Pub Partners BDM** know immediately.

You must notify your **Pub Partners BDM** of any potential **review** proceedings immediately.

How best to prevent a review

If you are made aware of complaints and you do nothing, you are more likely to face a **review** if you do not try to resolve matters. Any complaint brought to your attention must be taken seriously.

The **licensing board** and other **responsible authorities** will usually be required to engage with you in advance of submitting a **review** as part of their internal procedures. You will find that they usually prefer a collaborative approach in order to solve a problem, rather than going down a heavy handed formal enforcement approach.

Early engagement maintains good working relations between parties. It is important that you have a good relationship with the **licensing board** and the **responsible authorities** as this will create goodwill and encourage informal solutions to be found. However, residents are under no such obligations.

Unfortunately, there is nothing to stop a party applying to **review** the **premises licence** without discussing the matter with you first.

Here are a few tips that will help you to avoid a **review**:

- get to know your local police. You should try to get to know both your beat officer and also the local police licensing officer
- introduce yourself to the **licensing standards officer**. They can be an invaluable source of information and can often tell you if they are receiving complaints from other parties, or of any local initiatives
- join and attend your local **pub watch** scheme. There is no better way of keep a finger on the pulse of what is going on in your area than being amongst other licensees
- take any complaints received from neighbours seriously. Make sure you keep a record of the complaint and any actions taken to assist. Build a relationship with them and let them know of any upcoming events.

Discuss any complaints or potential issues with your **Pub Partners BDM**. There is every chance that they will have dealt with something similar in the past and will be able to advise on how best to avoid matters escalating.

Showing that you take these matters seriously and that you are doing something about an issue will go a long way to preventing a **review**.

In some cases, this may not be enough and a **review** will be started irrespective. In this case, being able to refer to any steps you have taken to try to assist will go a long way to persuading a **licensing board** that they do not need to take more drastic measures.

Review hearing

This section looks at **review hearings**.

A **review hearing** is not a court **hearing**, although it is still a 'quasi judicial' **hearing**. The approach is different for each **licensing board** but the general principle is for the **licensing board** to consider the **review** request and the facts that have given rise to the **review**. They must then decide whether the grounds for **review** have been established. The grounds for **review** are that a licence condition was breached, or any other ground relevant to the five licensing objectives.

If the committee feels the **licensing objectives** have been undermined they must then decide what action is required to remedy this.

At a **review hearing** the **licensing board** may do any, or more than one of the following:

- nothing
- issue a warning
- vary the **premises licence**
- suspend the **premises licence**
- revoke the **premises licence**.

At a **review hearing**, the **licensing board** will not only look at your conduct leading up to a **review**, but also your conduct between receiving the **review** and the date of the **hearing**.

At the **hearing** you must be able to demonstrate that you have operated the premises in such a way as to promote the **licensing objectives**. Any further problems will be taken as a sign that the premises cannot deal with any issues properly.

Evidence of good practice

It is important for you to show that you have the proper systems in place to deal with the issues complained of. It may be necessary to provide evidence to the **licensing board** showing some or all of the following:

- staff training records
- complaint log books, incident logs or noise check logs
- **CCTV** footage
- management plans and procedures

- policy documents, such as a dispersal policy or a garden management policy
- proof of age scheme documents and refusals log.

Your **Pub Partners BDM** and the **Pub Partners** licensing team will be able to assist in putting together any evidence that you want to rely on at a **hearing**.



Section [NEW]: Playing music, showing films and live television

Playing music

It is an offence to play music in a premises without permission of the copyright holder of that music. Copyright in music is owned by 2 parties: the song writer and the song publisher. Royalties for most popular music found on mainstream radio, jukeboxes and playlists are collected by 2 organisations: PRS and PPL. PRS act for the artists and PPL for the publishers.

Playing of any music in public or for staff requires the correct permission from the rights holders and a fee must be paid for this right to both PRS and PPL.

PRS can be found at: <https://www.prsformusic.com/>

PPL can be found at: <https://www.ppluk.com/>

It is an offence not to obtain the correct authorisation which can lead to prosecution.

Showing films (movies)

Showing pre-recorded films is a licensable activity. Before you show any films (for instance, hosting a cinema club night) you must check your licence permits it.

In addition, the copyright holders of the film are entitled to payment for a public showing of that film. This can be relatively cheap and easy to obtain for mainstream cinema releases. However, different organisations collect for various film producers. You will need to find the rights holder for the film you wish to show. Common film rights holders are: Filmbank, BFI and MPLC, all of which advertise which producers they collect for and how much they charge for showing one of their films.

Live television

Free to air television is usually permitted without the need to pay a fee, unless you are charging customers to enter the premises.

Broadcasting live sport without the proper permission

It is illegal to broadcast live sports provided by a UK provider, such as Sky Sports or BT sports without the correct permission to do so. The permission required is a commercial licence to permit the showing of sports in public. A licence to watch sports in private is not acceptable.

A lot of providers of foreign satellite boxes have sought to suggest that they have a system that allows you to legally show live football matches, such as the Premier League, without having to pay for a commercial licence. All of them to date have been found to be either illegal or in breach of the broadcaster's copyright. The offences that can be committed are:

- dishonestly receiving a programme included in a broadcast with intent to avoid payment of the applicable charge (criminal offence); and/or
- infringing the copyright in the broadcast (UK football rights are owned by the FA Premier League - FAPL) by making a copy of the broadcast available to the public (civil offence).

Large fines have been handed down to premises operators if found guilty. Recently, the fines for being found guilty of the criminal offence of dishonestly receiving a programme have been increased and are now unlimited for each offence. Fines of many tens of thousands of pounds have been levied against premises found to be showing matches illegally.

Section 12: Poster templates

The following template posters and notices can be used in order to ensure compliance with **premises licence conditions** or for good management of the premises.

This section includes the following notices:

- respect for neighbours
- local taxi details
- zero tolerance policy on drugs
- search policy notice
- no drinks outside
- we are members of **pubwatch**
- take care of personal belongings
- **CCTV** in operation
- **CCTV** coverage in toilets
- **Schedule 3 notice** concerning access by children and young persons
- **Section 110 notice**
- **Challenge 25**

Please note that you will need to ensure that you amend the notices as necessary in order to comply with your **premises licence conditions**

Section 13: Template management plans and policies

Management plans

More and more, premises are expected to have specific management plans for various responsibilities. You may find some of these plans are required by **conditions** on the **premises licence**.

Below is a step by step guide of how to create a management plan. This is a tool that you can use to create documents specifically for your premises.

How to draft a management plan:

Identify the issues

- determine what the management plan is seeking to address
- create headings and sub-headings for each section
- cross-reference to the minutes of any meetings that have taken place to ensure that all topics and issues are covered
- check the **conditions** of the **premises licence** to ensure you've looked at everything you are obliged to do by the **premises licence**.

Draft specific plans

For each topic identify:

- what needs to be done and why
- what times it needs to be done
- who's going to do it
- how will you know it's been done.

Make the instructions stand out from any commentary. This will make it easier to identify what needs doing.

Where required, make reference to other documents, for example a refusals log, and state where these can be found.

Set deadlines and build in checks

- always try to set targets for each plan (i.e. write the expected result of undertaking an action)
- make sure the plan is flexible and can be adapted to new issues. For instance, if there is a meeting with residents and an agreed action comes from it, there should be something in the plan setting out who will be responsible for updating the plan
- put in a date to **review** the plan periodically (i.e. every 6 months).

The following pages contain template policies and management documents to be used as required for the proper management of the premises.

These policies are templates only and cannot be used without adapting them for the premises and to reflect the **conditions** on the **premises licence**.

This section contains the following:

- staff authorisation for the sale of alcohol
- age verification policy
- risk assessment: use of **polycarbonates**
- search policy
- ejection policy
- management of smoking area
- **CCTV** policy
- special events policy
- dealing with customer complaints
- management of tables and chairs outside
- licensing risk register
- licensing due diligence log
- Management Plan for outdoor drinking areas.

Appendices

1. Mandatory conditions
2. List of offences under the licensing act
3. CCTV in pubs frequently asked questions



Meaning of words and phrases

Annual fee – A fee payable every year in order to ensure the premises licence can continue to be used. The fee is based on the pubs non domestic rateable value.

Appeal – Appeal of a licensing board decision to the Sheriff Court.

Local conditions – Conditions that are put on the premises licence by the licensing board when granting the premises licence.

AWP - Amusement with prizes gaming machines.

BDM - Business development manager.

Certificate of display - Certificate sent to the licensing board as part of any licence application to certify that the proper notice was displayed for the statutory period at the premises

CCTV - Closed circuit television.

Challenge 25 - A mandatory condition requiring staff of licensed premises to ask for identification from anyone who appears under the age of 25 and who is trying to buy alcohol.

Closure order - An order served on a premises in instances of crime and disorder where the premises must close. This is authorised by the rank of superintendent or above.

Conditions – These are the restrictions and obligations imposed on a premises licence which you must follow to ensure the licensing objectives are promoted. They come in the form of mandatory or attached conditions.

Consultation period – The time period in which representations can be made in response to a licensing application.

Core hours – Fixed hours during which premises licences will generally be granted. This is only applicable to some licensing authorities.

Designated premises manager (DPM) - Any premises at which alcohol is sold or supplied must by law have someone named on the premises licence who is the 'responsible person' for the sale and supply of alcohol known as the DPM. The DPM must hold a valid personal licence.

Doorstaff – SIA registered door managers.

Extended hours application - A permission granted by the licensing board to hold one specified event where additional hours may be traded.

Hearing – The meeting where a licensing application or review is determined by the licensing sub-committee.

GDPR – The legislation that governs how companies must protect individual's personal data. Failure to comply with the terms of GDPR can have serious consequences.

Licensed premises – The premises for which a premises licence has been granted.

Licensing board - A committee of elected councillors who determine licensing applications. Boards typically have a maximum of 10 and minimum of 5 members. New licence and major variation applications always go to a full hearing of the Board. Minor variations are approved automatically. Other types of application may go to a hearing if there are objections or controversial issues.

Licensing objectives – The basis upon which the Licensing (Scotland) Act 2005 is founded. It is the responsibility of premises licence holders and personal licence holders to observe and support these five fundamental objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection and improvement of public health
- the protection of children from harm.

Licensing plan - The approved licensing layout plan which is attached to a premises licence and shows the extent of the licensed premises.

Licensing policy – The local licensing board's policy on how they deal with alcohol licensing.

Licensing (Scotland) Act 2005 (licensing act) – The enabling legislation for all premises licensed for the sale of alcohol, regulated entertainment or late night refreshment.

Licensing standards officer - The local authority officer who is tasked with providing information and guidance, securing compliance of the licensing act, and providing mediation between licence holders and others.

Mandatory conditions - Standard conditions set by the Scottish government and applicable to all premises licences.

Major variation application – A variation to the premises licence which is too large to satisfy the criteria for a minor variation. A major variation will always result in a hearing.

Minor variation application – A type of licensing application used for small changes to the licence which are usually uncontroversial. A minor variation application cannot be refused.

New premises licence application– An application for the grant of a new premises licence.

Noise abatement notice – A notice issued under the Environmental Protection Act 1990 by an environmental health officer ordering noise nuisance to cease immediately. Breach of a notice can lead to prosecution.

Occasional licence – A licence for an unlicensed premises for a temporary duration.

On-sales – Sale of alcohol for consumption on the premises.

Off-sales – Sale of alcohol for consumption off the premises.

Operating plan - A document which sets out how the premises will be operated and forms part of the premises licence.

Pavement licence – Permission from the local authority to put tables and chairs on the pavement. Sometimes known as street café or tables and chairs licences.

Premises licence – The licence issued under the Licensing (Scotland) Act 2005 by the **licensing board** for which the premises is situated.

Premises licence summary – A summary of the main part of the premises licence.

Proof of Age Standards Scheme (PASS) – The UK's national proof of age accreditation scheme, endorsed by the Home Office, the Association of Chief Police Officers (ACPO), the Security Industry Authority (SIA) and the Trading Standards Institute (TSI).

Personal licence – A licence issued to an individual person which permits them to authorise the sale of alcohol. In order to be a DPM a person must hold a personal licence.

PPL – Phonographic Performance Licence.

Polycarbonates – Plastic glasses.

PRS - Performing Rights Society.

Pub Partners – The name given to Greene King's leased pub estate.

Pubwatch - A locally run group of licensed premises created to look at and liaise over issues associated with licensed premises within an area. They can also administer schemes for the benefit of the members such as banning schemes etc. They are often run in conjunction with the police and local authority.

PVSL – Public Video Screening licence.

Representation – An objection, either positive or negative, against a licensing application.

Relevant offence - A relevant offence is one that has been listed as relevant to the licensing act under regulations. An offence listed in this section permits the police to object to the grant of a licence if they feel that the presence of the conviction would undermine the licensing objectives. A conviction of a relevant offence by personal licence holder must be notified to them to the licensing board that issued the licence.

Responsible authorities - A term used to mean other authorities that may have an interest in licensed premises including, but not limited to, NHS, Building Control, Environmental Health, and Fire.

Review - The process for considering a premises licence where there are problems with the operation of the premises that negatively impact upon the four licensing objectives.

Schedule 3 notice – A notice displayed at premises stating whether children and young persons are allowed access, and if so, to which parts.

Section 110 notice – A notice displayed at premises stating certain offences concerning children and young persons.

SIA - Security Industry Authority.

Suspension – The premises licence may be suspended for the non payment of the annual fee or by the licensing board following a review.

SWP - Skills with prizes machines.