

Introduction

The Licensing (Scotland) Act 2005 makes provision for any person to object to a Premises Licence Application or to make Representations in support of, or proposing modifications or conditions to a Premises Licence Application.

This paper is based on the author's membership of a community council for a dozen or so years looking after licensing issues on their behalf. Submitting and speaking on behalf of many objections but with no experience of the submission of representations. The recommendations made below should, nonetheless be seen as relating to Representations as well as Objections. The words "Response" and "Respondent" are used throughout the paper to refer to objectors/objections and submitters of/representations.

Objecting to, or making representations regarding licensing applications is an important part of the licensing process, but it would benefit from improvement in its accessibility, clarity and fairness, plus greater recognition of the importance of the respondent's role and consideration for their convenience.

Clarity and accessibility

Current situation

Few Edinburgh residents submit formal objections or representations to licensing applications. Those who do will either have seen a public notice – New Premises (Appendix 1; Page 4) or Major Variation (Appendix 2; page 5) affixed to the premises in question or will, by virtue of their membership of the Community Council within which or closely adjacent to which the premises are situated, have been notified of the application by the Licensing Department. In neither case will the full details of the application be readily available. The public notice does say that further details including operating plan (Appendix 3; Pages 6 - 13) are available at Licensing Board offices, but the email notification to community councils simply gives a link to the abbreviated entry in the online register of applications, with no reference to the operating plan. The complete licensing application includes both the operating plan and the layout plan, but neither the public notice nor the notification to community councils makes any reference to the layout plan. (There is no typical layout plan attached as each one is unique.)

Most local residents have no experience of what is required when responding and many community councils have relatively few licensing applications in their area and thus have little or no experience of the process.

Recommended improvements

The process of responding should be much more user-friendly, particularly for first-time respondents.

1. Until a better online system is available, each response received by the Licensing Department should prompt a routine reply, attaching copies of the relevant operating and layout plans (in the case of major variations both current and proposed).
2. Layout plans are sometimes on very large sheets, details of which can be difficult to decipher from the provided copy. Respondents should be made aware that originals can be viewed at the City Chambers. If possible, respondents, if they need to, should be able to view originals at a local council office.

Fairness

Current Situation

Respondents are given a limited time to submit their responses – rarely more than a couple of weeks. This limits the opportunity for individual residents to consult friends and neighbours. Most community councils meet no more often than monthly - and then not every month. It's also not uncommon for a notice to appear at the beginning of a holiday period. The limited time available may mean that, rather than discussing an application in a regular meeting, community councils will be reduced to the less satisfactory medium of email among members and regular attenders.

Having composed and submitted their response, a copy of which is provided to the applicant, respondents may, after further discussions or a little more research, come up with additional points regarding the application concerned, only to find when speaking to their response at the Licensing Board meeting, that they are not permitted to speak on any points not included in their submitted response. The applicant, on the other hand, may have come up with the arguments in favour of the application only minutes before speaking and, because the respondent(s) must speak first, can include counter arguments to the reasons for the response. Respondents are not then allowed to speak further unless a Board member asks them a question – a very rare occurrence in my experience.

On one occasion, when a respondent was unable to attend a Board meeting to support a response that had been submitted on behalf of their community council, a City Councillor who had not previously attended a Licensing Board meeting agreed to speak on their behalf. The councillor was astonished not to be allowed to deviate from the terms of the submitted response nor to contest the remarks made by the applicant. They said afterwards that they asked themselves what the point was of their attending the hearing; a question many respondents probably ask themselves.

Recommended improvements

- 3.** Before they speak to their response, the Convener should ask each respondent if they wish to make any points in addition to those included in their submitted response. If so, the additional points would be noted separately and the applicant would be given the opportunity to ask for the application to be continued to a later meeting to give time for any amendment required.
- 4.** Having had to speak first without prior knowledge of the applicant's argument, the respondent should be asked after the applicant has spoken whether they wish to say anything more.
- 5.** In support of respondents having to speak first, I've heard it argued that the convention is compatible with the presumption that applications should be granted unless there is an exceptional reason to refuse. If so, in the interest of fairness and logical consistency, when an application relates to premises in an area of overprovision (in which case the presumption is reversed with the default being to refuse), the applicant should be required to speak before the respondent. Moreover, if the requirement for the respondent not to deviate from the submitted response were to stand, the same requirement should apply to the applicant's published application in an area of overprovision.

Recognition

Current situation

Applicants are almost always supported by professional legal representatives who are fully conversant with the Licensing Act, its associated guidance etc. Respondents, whether individual residents or community council members, are unpaid volunteers but often feel they are treated as if they are a nuisance, even though the Licensing Act recognises them as being part of the Licensing process.

We are all fallible – even Licensing Board members – and occasionally a respondent may be able to make a helpful suggestion. There have been several occasions in my experience when I believe that, had the respondent been allowed to speak after the applicant, the Board would have reached a better conclusion.

Here are two examples:

Most recently, because of an oversight on the part of the Licensing Department, neither of two respondents to the same application had been notified that, after their responses had been submitted but before the relevant hearing, the applicant had submitted an amended application. Both respondents were confused and were rather slow to react but, once it became clear what had occurred, they started to protest but were told they'd had their say. Had they been allowed to speak, they could have asked for the application to be continued to a subsequent hearing so that they could consider, and discuss with their respective associates, whether they wanted to change their responses in the light of the changes to the application. That, surely, would have been the correct procedure.

On another occasion, a Board member didn't understand that changes to the Board's policy are not retro-active, only taking effect in the case of new applications or when explicitly requested as part of a variation. Unfortunately, the error went uncorrected and the respondent's attempt to protest was shut down.

Recommended improvement

6. When respondents want to say something after the applicant has spoken, the Board and its convener (recognising that respondents are usually seeking to contribute to the process, not to frustrate it) should politely ask them to be brief, thank them for their contribution, take on board the points made and if what they have said fails to comply with the law or the Board's policy, clarify how and why that is the case.

Convenience

Current situation

Typically, a respondent will be called to attend at 10 or 10:30am on the day of the relevant hearing and will then have to sit through sometimes several hours of other business before the application to which they have objected is reached.

Recommended improvement

7. Of course, it's difficult to anticipate how long the assessment of each application will take, and one doesn't want the relevant application to be dealt with before the respondent is due to appear. However, all applications for which responses have been submitted could be brought to the earliest possible point in the meeting and arranged in ascending order of complexity and/or likely controversy, ideally with allocated timeslots, so that unpaid volunteer respondents would have had as little of their time wasted as possible.

NOTICE OF APPLICATION FOR PREMISES LICENCE

1. Applicant/Agent name & address (include postcode) 	2. Name & address of premises (inc. postcode)
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	LICENSED HOURS APPLIED FOR	
	On Sale	Off Sale
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		

3. Brief overview of nature of the business proposed to be carried on in the premises

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Further detailed information in regard to this application (including the operating plan) is available for inspection at Licensing Board offices [*provide details of address and times available for inspection*].

Any person is eligible to object. Anyone wishing to object or make representations must not later than [*date*] lodge with the clerk of the Licensing Board a written notice of objection or representation. It is the responsibility of the person making the objection or representation to ensure that the Board has received it and it may be helpful to lodge it in one of the following ways:

- Delivered by hand within the time specified; or
- Posted (by registered or recorded or special delivery post) so that in the normal course of post it might be expected to be delivered within that time; or
- Faxed within that time and an acknowledgement of the fax is kept; or
- Emailed within that time and an acknowledgement of the email is kept.

It is the responsibility of the person making the objection or representation to ensure that the Board has received it.

A PRO-FORMA FORM (PREFERRED) FOR MAKING OBJECTIONS OR REPRESENTATIONS IS AVAILABLE FROM THE CLERK AND ONLINE AT []

Date: **Signature**

September 2023

OPERATING PLAN

Licensing (Scotland) Act 2005, section 20(2)(b)(i)

Question 1

STATEMENT REGARDING ALCOHOL BEING SOLD ON PREMISES/OFF PREMISES OR BOTH

<i>1(a) Will alcohol be sold for consumption solely ON the premises?</i>	<i>YES/NO*</i>
<i>1(b) Will alcohol be sold for consumption solely OFF the premises?</i>	<i>YES/NO*</i>
<i>1(c) Will alcohol be sold for consumption both ON and OFF the premises?</i>	<i>YES/NO*</i>
<i>*Delete as appropriate</i>	

Question 2

STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION ON PREMISES

<i>Day</i>	<i>ON Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>		
<i>Tuesday</i>		
<i>Wednesday</i>		
<i>Thursday</i>		
<i>Friday</i>		
<i>Saturday</i>		
<i>Sunday</i>		

Question 3

STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION OFF PREMISES

<i>Day</i>	<i>OFF Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>		
<i>Tuesday</i>		
<i>Wednesday</i>		
<i>Thursday</i>		
<i>Friday</i>		
<i>Saturday</i>		
<i>Sunday</i>		

Question 4

SEASONAL VARIATIONS

<i>Does the applicant intend to operate according to seasonal demand</i>	<i>YES/NO*</i>
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**If YES – provide details*

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Question 5

PLEASE INDICATE THE OTHER ACTIVITIES OR SERVICES THAT WILL BE PROVIDED ON THE PREMISES IN ADDITION TO SUPPLY OF ALCOHOL

COL. 1	COL. 2	COL. 3	COL. 4
5(a) Activity	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Accommodation		N/A	N/A
Conference facilities			
Restaurant facilities			
Bar meals			
5(b) Activity Social functions including:	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Receptions including Weddings, funerals, birthdays, retirements etc.			
Club or other group meetings etc.			
5(c) Activity Entertainment including:	Please confirm YES/NO	To be provided during core licensed hours – please confirm YES/NO	Where activities are also to be provided outwith core licensed hours please confirm YES/NO
Recorded music – see 5(g)			
Live performances – see 5(g)			
Dance facilities			
Theatre			

<i>Films</i>			
<i>Gaming</i>			
<i>Indoor/outdoor sports</i>			
<i>Televised sport</i>			
5(d) Activity	<i>Please confirm</i> <i>YES/NO</i>	To be provided during core licensed hours – please confirm <i>YES/NO</i>	Where activities are also to be provided outwith core licensed hours please confirm <i>YES/NO</i>
<i>Outdoor drinking</i> <i>facilities</i>			
5(e) Activity	<i>Please confirm</i> <i>YES/NO</i>	To be provided during core licensed hours – please confirm <i>YES/NO</i>	Where activities are also to be provided outwith core licensed hours please confirm <i>YES/NO</i>
<i>Adult entertainment</i>			

Where you have answered YES in respect of any entry in column 4 above, please provide further details below.

5(f) any other activities

If you propose to provide any activities other than those listed in 5(a) – (e) please provide details or further information in the box below.

5(g) Late night premises opening after 1.00am

Where you have confirmed that you are providing live or recorded music, will the decibel level exceed 85dB?	YES/NO*
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When fully occupied, are there likely to be more customers standing than seated?	YES/NO*
*Delete as appropriate	

Question 6 (On-sales only)

CHILDREN AND YOUNG PERSONS

6(a)	When alcohol is being sold for consumption on the premises will children or young persons be allowed entry	YES/NO*
	*Delete as appropriate	

6(b) Where the answer to 6(a) is YES provide statement of the **TERMS** under which they will be allowed entry

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6(c) Provide statement regarding the **AGES** of children or young persons to be allowed entry

6(d) Provide statement regarding the **TIMES** during which children and young persons will be allowed entry

6(e) Provide statement regarding the **PARTS** of the premises to which children and young persons will be allowed entry

Question 7

CAPACITY OF PREMISES

What is the proposed capacity of the premises to which this application relates?

Question 8

PREMISES MANAGER (NOTE: not required where application is for grant of provisional premises licence)

Personal details

8(a) Name

8(b) Date of birth

8(c) Contact address

8(d) Email address

8(e) Personal licence

<i>Date of issue</i>	<i>Name of Licensing Board issuing</i>	<i>Reference no. of personal licence</i>

DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT

If signing on behalf of the applicant please state in what capacity.

The contents of this operating plan are true to the best of my knowledge and belief.

Signature * (see note below)

Date

Capacity APPLICANT/AGENT (delete as appropriate).

Telephone number and email address of signatory

*** Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.