



Licensing (Scotland) Act 2005

2005 asp 16

PART 3

PREMISES LICENCES

Review of premises licence

36 Application for review of premises licence

- (1) Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.
- (2) An application under subsection (1) is referred to in this Act as a “premises licence review application”.
- (3) The grounds for review referred to in subsection (1) are—
 - [^{F1}(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,]
 - (a) that one or more of the conditions to which the premises licence is subject has been breached, or
 - (b) any other ground relevant to one or more of the licensing objectives.
- (4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) only if—
 - (a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under section 14(2)(a)(i), and
 - (b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.
- (5) A premises licence review application must specify the alleged ground for review, including in particular—
 - [^{F2}(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant's view that the alleged ground applies is based,]

Status: Point in time view as at 29/06/2018.

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- (a) where the ground is that specified in subsection (3)(a), the condition or conditions alleged to have been breached,
 - (b) where the ground is that specified in subsection (3)(b), the licensing objective or objectives to which the alleged ground of review relates.
- [^{F3}(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—
- (a) the licence holder,
 - (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
 - (c) any person who is an interested party in relation to the licensed premises.]
- (6) The Licensing Board may reject a premises licence review application if the Board considers the application—
- (a) is vexatious or frivolous, or
 - (b) does not disclose any matter relevant to any ground for review.
- (7) Where the Licensing Board rejects a premises licence review application under subsection (6), the Board—
- (a) must give notice of the decision, and the reasons for it, to the applicant, and
 - (b) where it is rejected on the ground that it is frivolous or vexatious, may recover from the applicant any expenses incurred by the Board in considering the application.
- (8) In any proceedings by a Licensing Board for the recovery of expenses under subsection (7)(b), a copy of any minute of proceedings of the Licensing Board—
- (a) recording the Board's rejection of the application and the grounds for rejection, and
 - (b) certified by the clerk of the Board to be a true copy,
- is sufficient evidence of the rejection and of the establishment of the grounds for rejection.

Textual Amendments

- F1** S. 36(3)(za) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 45(2)(a)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)
- F2** S. 36(5)(za) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 45(2)(b)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)
- F3** S. 36(5A) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 45(2)(c)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)

Commencement Information

- II** S. 36 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, **Sch. 1**

37 Review of premises licence on Licensing Board's initiative

- (1) The appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review.

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- (2) A proposal under subsection (1) is referred to in this Act as a “premises licence review proposal”.
- (3) The grounds for review referred to in subsection (1) are those specified in [F4]section] 36(3).
- (4) A premises licence review proposal must specify the alleged ground for review, including in particular—
- [F5](za) where the ground is that specified in section 36(3)(za), a summary of the information on which the Board's view that the alleged ground applies is based,
 - (a) where the ground is that specified in [F6]section] 36(3)(a), the condition or conditions alleged to have been breached,
 - (b) where the ground is that specified in [F7]section] 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.
- [F8](5) A Licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to—
- (a) the licence holder,
 - (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
 - (c) any person who is an interested party in relation to the licensed premises.]

Textual Amendments

- F4** Word in s. 37(3) substituted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), s. 88(2), [sch. 2 para. 4\(5\)\(a\)](#); S.S.I. 2017/119, art. 2, sch.
- F5** S. 37(4)(za) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 45\(3\)\(a\)](#), 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)
- F6** Word in s. 37(4)(a) substituted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), s. 88(2), [sch. 2 para. 4\(5\)\(b\)\(i\)](#); S.S.I. 2017/119, art. 2, sch.
- F7** Word in s. 37(4)(b) substituted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), s. 88(2), [sch. 2 para. 4\(5\)\(b\)\(ii\)](#); S.S.I. 2017/119, art. 2, sch.
- F8** S. 37(5) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 45\(3\)\(b\)](#), 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)

Commencement Information

- I2** S. 37 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, [Sch. 1](#)

38 Review hearing

- (1) Where a Licensing Board—
- (a) makes a premises licence review proposal, or
 - (b) receives a premises licence review application,
- the Board must hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under subsection 36(6).
- (2) A hearing under subsection (1) is referred to in this Act as a “review hearing”.

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- (3) Where a review hearing is to be held, the Licensing Board must—
- (a) in the case of a premises licence review application, give notice of the hearing to the applicant, and
 - (b) give notice of the hearing and a copy of the premises licence review proposal or application to—
 - (i) the licence holder, and
 - (ii) any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.
- (4) Where a Licensing Standards Officer receives under subsection (3)(b)(ii) a copy of a premises licence review proposal or application—
- (a) the Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal or application, and
 - (b) the Licensing Board must take the report into account at the hearing.
- (5) The Licensing Board may, for the purposes of the review hearing—
- (a) obtain further information from such persons, and in such manner, as the Board thinks fit, and
 - (b) take the information into account.
- (6) In particular, the Board may—
- (a) request—
 - (i) the attendance at the review hearing of any person for the purpose of providing information, and
 - (ii) the production at the review hearing by any person of any documents in that person's possession or under that person's control, and
 - (b) take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.

Modifications etc. (not altering text)

C1 S. 38(3)-(6) applied (with modifications) (1.1.2008) by [Licensing \(Transitional and Saving Provisions\) \(Scotland\) Order 2007 \(S.S.I. 2007/454\)](#), arts. 1, 17(9)

Commencement Information

I3 S. 38 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, [Sch. 1](#)

39 Licensing Board's powers on review

- (1) At a review hearing in relation to any premises licence, the Licensing Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the steps mentioned in subsection (2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.

[^{F9}(1A) Subsection (1) is subject to subsection (2A).]

- (2) Those steps are—

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- (a) to issue a written warning to the licence holder,
- (b) to make a variation of the licence,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence.

[^{F10}(2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence.

(2B) Subject to section 39B, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision.]

(3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.

Textual Amendments

- F9** S. 39(1A) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 45(4)(a)**, 88(2); [S.S.I. 2017/119](#), **art. 2**, **sch.** (with arts. 3, 4)
- F10** S. 39(2A)(2B) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 45(4)(b)**, 88(2); [S.S.I. 2017/119](#), **art. 2**, **sch.** (with arts. 3, 4)

Commencement Information

- I4** S. 39 in force at 1.2.2008 by [S.S.I. 2007/472](#), **art. 2**, **Sch. 1**

[^{F11}39A Notification of determinations

- (1) Where a Licensing Board, at a review hearing—
- (a) decides to take one of the steps mentioned in section 39(2), ^{F12}...
 - (b) decides not to take one of those steps [^{F13}, or
 - (c) decides to revoke a premises licence under section 39(2A),]
- the Board must give notice of the decision to each of the persons mentioned in subsection (2).
- (2) The persons referred to in subsection (1) are—
- (a) the holder of the premises licence, and
 - (b) where the decision is taken in connection with a premises licence review application, the applicant.
- (3) Where subsection (1)(a) applies, the holder of the premises licence may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
- (4) Where—
- (a) subsection (1)(a) or (b) applies, and
 - (b) the decision is taken in connection with a premises licence review application, the applicant may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
- (5) Where the clerk of a Board receives a notice under subsection (3) or (4), the Board must issue a statement of the reasons for the decision to—
- (a) the person giving the notice, and

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- (b) any other person to whom the Board gave notice under subsection (1).
- (6) A statement of reasons under subsection (5) must be issued—
 - (a) by such time, and
 - (b) in such form and manner,
 as may be prescribed.]

Textual Amendments

- F11** S. 39A inserted (28.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 182\(2\), 206\(1\)](#); [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#)
- F12** Word in s. 39A(1) repealed (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 45\(5\)\(a\), 88\(2\)](#); [S.S.I. 2017/119](#), [art. 2](#), [sch.](#) (with arts. 3, 4)
- F13** S. 39A(1)(c) and word inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 45\(5\)\(b\), 88\(2\)](#); [S.S.I. 2017/119](#), [art. 2](#), [sch.](#) (with arts. 3, 4)

[^{F14}39B Recall of revocation of licence under section 39(2A)

- (1) This section applies where a Licensing Board decides to revoke a premises licence under section 39(2A).
- (2) The Board must recall the revocation if—
 - (a) a relevant application is made before the end of the period referred to in section 39(2B) (“the 28 day period”), and
 - (b) the Board grants the application.
- (3) The Board may extend the 28 day period pending determination of a relevant application.
- (4) In this section, “relevant application” means—
 - (a) an application under section 33(1) for the transfer of the premises licence, or
 - (b) a premises licence variation application seeking a variation of the licence that the Board considers would remove the ground on which the licence was revoked under section 39(2A).
- (5) This section does not affect the right to appeal against the decision to revoke the licence under section 39(2A).]

Textual Amendments

- F14** S. 39B inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), [ss. 45\(6\), 88\(2\)](#); [S.S.I. 2017/119](#), [art. 2](#), [sch.](#) (with arts. 3, 4)

40 Review of Licensing Board's decision to vary or suspend licence

Where a Licensing Board has made a variation under subsection (2)(b) of section 39 or suspended the licence under subsection (2)(c) of that section, the Board may—

- (a) on the application of the licence holder, and
- (b) if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary,

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revoke the variation or suspension.

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Commencement Information

I5 S. 40 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, [Sch. 1](#)

Status:

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