



Licensing (Scotland) Act 2005

2005 asp 16

PART 3

PREMISES LICENCES

Premises licence applications

23 Determination of premises licence application

- (1) A premises licence application received by a Licensing Board is to be determined in accordance with this section.
- (2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (3) In considering and determining the application, the Board must take account of the documents accompanying the application under section 20(2)(b).
- (4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—
 - (a) if none of them applies, the Board must grant the application, or
 - (b) if any of them applies, the Board must refuse the application.
- (5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2), 64(2) or 65(3),
 - [^{F1}(ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence,]
 - (c) that the Licensing Board considers that the granting of the application would [^{F2}otherwise] be inconsistent with one or more of the licensing objectives,
 - (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,

Changes to legislation: Licensing (Scotland) Act 2005, Section 23 is up to date with all changes known to be in force on or before 29 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

the Board considers that the premises are unsuitable for use for the sale of alcohol,

- (e) ^{F3}that] the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of ^{F4}the same or similar description as the subject premises,] in the locality.

^{F5}(6) In considering whether ^{F6}either of the grounds for refusal specified in subsection (5) (ba) and (c) applies,] the Licensing Board must in particular take into account—

- (a) any conviction, notice of which is given by the ^{F7}chief constable] under subsection (4)(b) of section 21, and
(b) any report given by the ^{F7}chief constable] under section 24A(2).]

(7) Where the Licensing Board considers that—

- (a) they would refuse the application as made, but
(b) if a modification proposed by them were made to the operating plan ^{F8}or layout plan (or both)] for the subject premises accompanying the application, they would be able to grant the application,

the Board must, if the applicant accepts the proposed modification, grant the application as modified.

(8) Where the Licensing Board refuses the application—

- (a) the Board must specify the ground for refusal, and
(b) if the ground for refusal is that specified in subsection ^{F9}(5)(ba) or (c)] , the Board must specify the licensing objective or objectives in question.

(9) In subsection (5)(e), references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.

Textual Amendments

- F1** S. 23(5)(ba) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 43(3)(a)(i)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)
- F2** Word in s. 23(5)(c) inserted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 43(3)(a)(ii)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)
- F3** Word in s. 23(5)(e) substituted (30.9.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 55(3)(a)**, 88(2); S.S.I. 2016/132, art. 2(b) (with art. 4)
- F4** Words in s. 23(5)(e) substituted (30.9.2016) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 55(3)(b)**, 88(2); S.S.I. 2016/132, art. 2(b) (with art. 4)
- F5** S. 23(6) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **Sch. 6 para. 5**; S.S.I. 2010/413, art. 2, sch.
- F6** Words in s. 23(6) substituted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 43(3)(b)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)
- F7** Words in s. 23(6)(a)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), sch. 7 para. 29(2), **(3)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F8** Words in s. 23(7)(b) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 181**, 206(1); S.S.I. 2010/413, art. 2, sch.
- F9** Words in s. 23(8)(b) substituted (15.5.2017) by [Air Weapons and Licensing \(Scotland\) Act 2015 \(asp 10\)](#), **ss. 43(3)(c)**, 88(2); S.S.I. 2017/119, art. 2, sch. (with arts. 3, 4)

Commencement Information

- I1** S. 23 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, **sch. 1**

Changes to legislation:

Licensing (Scotland) Act 2005, Section 23 is up to date with all changes known to be in force on or before 29 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- specified provision(s) Appointed Day(s) by [S.S.I. 2006/239 art. 2](#) (This S.S.I. is revoked on 25.5.2006 by S.S.I. 2006/286, art. 6)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33(1)(1A) substituted for s. 33(1)-(3) by [2015 asp 10 s. 49\(2\)\(a\)](#)
- s. 33(8)(za) inserted by [2015 asp 10 s. 49\(2\)\(c\)](#)
- s. 33(8A) inserted by [2015 asp 10 s. 49\(2\)\(d\)](#)
- s. 33A inserted by [2015 asp 10 s. 49\(4\)](#)
- s. 134ZA-134ZC inserted by [2015 asp 10 s. 61\(2\)](#)