



# 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),
  - (c) that the Licensing Board considers that the granting of the application would 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,the Board considers that the premises are unsuitable for use for the sale of alcohol,
  - (e) that, having regard to the number and capacity of—

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*Status: This is the original version (as it was originally enacted).*

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- (i) licensed premises, or
  - (ii) licensed premises of the same or similar description as the subject premises,

in the locality in which the subject premises are situated, 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 that description, in the locality.
- (6) In considering, for the purposes of the ground for refusal specified in subsection (5)(c), whether the granting of the application would be inconsistent—
  - (a) with the crime prevention objective, the Licensing Board must, in particular, take into account—
    - (i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21,
    - (ii) any recommendation of the chief constable included in the notice under subsection (5) of that section, and
  - (b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 21.
- (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 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 (5)(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.