



Moray Licensing Board
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The Licensing (Scotland) Act 2005

The Moray Licensing Board Hearing Procedures

This appendix applies to procedures to be followed when there is to be a hearing of the Moray Licensing Board in relation to the exercise of its function under the Licensing (Scotland) Act 2005.

By virtue of paragraph 12 of Schedule 1 of the Licensing (Scotland) Act 2005 (subject to further Regulations) "the arrangements for meetings of a Licensing Board, and other matters relating to proceedings of the Board, are to be such as the Board may by rules provide." The Licensing Board must ensure that any rules made by them are published.

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1. Communication

In general communication will be accepted by letter sent by post or document exchange (to the addresses above), by facsimile (to the number above) or by electronic mail addressed to licensing@moray.gov.uk

The use of electronic communication is encouraged. All communication may be undertaken electronically in order to save time and costs including, but not limited to: Citations; Notices; Notification of attendance; Submissions; Attachments; Documents in general; Decision notices.

NB. It should be noted that large file sizes may inhibit the use of electronic communication as the Board's email system may automatically quarantine/delay files exceeding 5MB in size. It will be the sender's responsibility to confirm receipt.

The Moray Licensing Board has published separate privacy notices and information regarding data protection. Please see the Board's web pages for details.

All communication should be addressed to the Clerk to the Moray Licensing Board. If a party has made representations and wishes to withdraw the same then that party should indicate this to the Clerk of the Board in writing no later than 7 days before the hearing. If all representations are withdrawn then the hearing may be cancelled and the application may be considered under delegated powers.

Except where otherwise provided, a requirement to give a notice (or to notify) is a requirement to give notice in writing, and for that purpose, a message sent by facsimile transmission or electronic mail must be treated as a notice given in writing.

2. When the Moray Licensing Board Will or May Hold a Hearing

2.1 Premises Licences

Where, on an application for a premises licence:

Under section 23(2) the Board must hold a hearing for the purpose of considering and determining a premises licence application. A hearing under this section must take place no later than 119 days after the last day on which objections/representations on the application should be received by the Board.

Where, in respect of a premises licence:

The Board receives an application under section 29 to vary the premises licence and the variation is not a minor one;

THEN: Under section 30(3) the Board must hold a hearing for the purpose of considering and determining the application. A hearing under this section must take place no later than 119 days after the last day on which objections/representations on the application should be received by the Board.

Where, on an application to transfer a premises licence:

Under section 33 the Board receives a notice under subsection (6)(b) of relevant conviction(s) on the part of the transferee;

THEN: Under section 33(9) the Board must hold a hearing for the purpose of considering and determining the application. A hearing under this section must take place no later than 42 days after the date on which the Board received the s. 33(6)(b) notice.

Where, in respect of a premises licence:

The Board makes a premises licence review proposal under section 38(1)(a) or receives a premises licence review application under section 38(1)(b);

THEN: Under section 38(1) the Board must hold a hearing for the purposes of considering and determining the proposal or application. A hearing under this section must take place no later than 42 days after the date on which the Board made the s. 38(1)(a) proposal or received the s. 38(1)(b) application.

Where, in respect of a premises licence in place:

The Board receives notice of a relevant conviction on the part of the licence holder under section 44(4)(b);

THEN: The Board must make a premises licence review proposal and under section 38(1) the Board must hold a hearing for the purposes of considering and determining the proposal (for which see above).

2.2 Extended Hours and Occasional Licences

Where, in respect of a premises licence:

The Board receives an application from the licence holder for extended hours for a special event under section 68;

THEN: Under section 70(2) the Board may hold a hearing for the purpose of determining the application. Any hearing under this section must take place no later than 42 days after the date on which the Board received the extended hours application.

Where, on an application for an occasional licence:

Under section 59, the Board receives a report from the police or the LSO or received objections/representation to the application;

THEN: Under section 59(4) the Board may hold a hearing for the purpose of determining the application for an occasional licence. A hearing under this section must take place no later than 42 days after the date on which the Board received the occasional licence application.

2.3 Closure Orders

Where on application for a closure order:

Closure orders under section 97. Section 100 allows for the making of regulations in respect of the procedures, including hearings, for closure orders.

2.4 Personal Licences

Where, on an application for a personal licence:

(Assuming that: the applicant is aged 18 or over; the applicant possesses a licensing qualification; and no personal licence previously held by the applicant has been revoked within the period of 5 years ending with the day on which the application was received)

AND where:

The Board has received from the appropriate chief constable a notice under section 73(3)(b) or section 75(6)(b) specifying conviction(s) of the applicant for a relevant offence;

THEN: Under section 74(5) the Licensing Board must hold a hearing for the purpose of considering and determining the application.

Where, after grant of the personal licence:

The Board has received from the appropriate chief constable a notice under section 83(4)(b) specifying conviction(s) of the applicant for a relevant offence;

THEN: Under section 83(7) the Licensing Board must hold a hearing for the purpose of considering revocation, suspension or endorsement of the personal licence. A hearing under this section must take place no later than 42 days after the date on which the Board received the notice under s. 83(4)(b).

Where, on a hearing for review of a premises licence:

The Board makes a finding in accordance with section 84(2) that the licence holder concerned acted in a manner which was inconsistent with any of the licensing objectives;

THEN: Under sections 84(3)(A) or 84(5) the Board must hold a hearing or give notice to the relevant Licensing Board which must hold a hearing for the purpose of considering revocation, suspension or endorsement of the personal licence.

Where, after the grant of the personal licence:

3 endorsements have been made in any personal licence;

THEN: Under section 86(1) the Licensing Board which issued the licence must hold a hearing with a view to suspending the licence for such period, not exceeding 6 months, as the Board considers appropriate, or revoking the licence.

3. Notice of the Hearing

3.1 The Notice

The Moray Licensing Board will give notice of any hearing that is to be held in relation to the Licensing (Scotland) Act 2005. The notice will specify:

- The date on which, the place at which and the time when the hearing is to take place;
- That the Licensing Board will make available the documents relevant to the hearing to any person that has made representations (unless the relevant committee considers that the representations are vexatious or frivolous).

The notice will be sent by ordinary post. The Moray Licensing Board will endeavour to ensure that it is received by relevant parties no later than 10 working days before the first day on which the hearing is to be held (as specified in the notice).

3.2 Information to Accompany the Notice

The notice of hearing will be accompanied by a copy of this document or will direct the recipient to the appropriate page of the website to find this document. This document contains information that explains the following:

- The consequences provided for where a party informs the relevant committee that he does not wish to attend or be represented at the hearing, or fails to inform the relevant committee whether he wishes to attend or be represented at the hearing;
- The requirements imposed on the Licensing Board in conducting a hearing;
- The consequences provided for where a party has indicated that he wishes to attend or be represented at the hearing but fails to attend or be represented at the hearing.
- The Procedure to be followed at the meeting.

- The time limit and method, if any, by which a party should inform the Board that he wishes to attend or address the hearing.
- The time limit and method, if any, by which a party should inform the Board that he wishes to be assisted or represented by another person.
- The time limit and method, if any, by which a party should inform the Board that he will want to call a witness to give evidence at the hearing, and the matters in relation to which he wishes a witness to give evidence.
- The time limit and method, if any, by which a party should inform the Board that he wishes to withdraw any representations.
- Where relevant the time limit and method, if any, by which a party should inform the Board that he is willing to consent to the application being determined without a hearing.
- The matters, if any, on which the Board considers at the time that it will want clarification at the hearing from any party.

4. Prior to the Hearing

4.1 Exchange of Evidence

Each party should as far as possible notify other parties and the Clerk of the evidence that they intend to adduce at the hearing including full details of that evidence, details of witnesses and copies of documents (defined in its widest sense) to be produced.

Notification including, where relevant, copy documents should be sent to other parties and the Clerk at least 7 days before the hearing.

Where a witness is unavailable for a particular hearing then the party may request an adjournment and should do so as soon as is reasonably practicable. The Clerk or the Moray Licensing Board will try and establish the likely nature of the witness's evidence before a decision is made in the light of all the circumstances as to whether to adjourn the hearing or proceed in any event.

4.2 Site Visits

Where appropriate the Moray Licensing Board will endeavour to make arrangements to visit the premises in advance of the hearing. Alternatively a hearing may be postponed for such arrangements. This will assist the Board in assessing the suitability of the premises and will provide an opportunity to view the surroundings.

The Moray Licensing Board is particularly interest in visiting premises where it is proposed that children and/or young persons be allowed access or where application is made to vary the provisions for access by children and/or young persons.

Site visits will be arranged with the applicant/premises licence holder. They will not generally be advertised to the public although the Board may choose to do so if appropriate.

4.3 Calling for Further Evidence

Where it appears to the Board, prior to any hearing, that the presence of further persons or documents or other evidence of any sort may be desirable in determining an application

then the Board may call upon such persons to attend the meeting and/or produce such documents or other evidence for the purpose of the hearing as the Board sees fit.

5. Attendance at the Hearing

5.1 Citation of Parties

See also notice of hearing at para 3.1 above.

Relevant parties will be given notice requiring them to attend at a hearing. The Moray Licensing Board will endeavour to ensure that it is received by relevant parties no later than 10 working days before the first day on which the hearing is to be held (as specified in the notice).

The notice will specify that should the party fail to appear then the Moray Licensing Board will decide what weight to attach to their evidence and may decide to deal with the matter as the Board sees fit in their absence. See also paragraph 5.3 below.

5.2 Attendance

Parties should attend or be represented and should notify the Clerk of their intention to attend and/or be represented in writing at least 7 days before the hearing. Details of any representative should be included in the notification.

By virtue of Regulation 14 of the Licensing Procedure (Scotland) Regulations 2007, a party may be represented by another person at a hearing. However the Board may decide not to hear from the representative where he/she cannot produce evidence, in the form of a written authority, confirming his/her standing to appear for the party.

5.3 Failure to Appear

Where a party fails to appear or be represented then The Moray Licensing Board will try and establish the reason(s) for that failure. The Moray Licensing Board will then decide whether to proceed with the hearing in the absence of that party or postpone the meeting to another date. Each matter will be judged on its own merits but in general:

- If a party has indicated an inability to appear at a hearing and has a genuine reason for that inability then a request for an postponement will normally be granted;
- if a party has indicated an intention to appear but fails to do so then the hearing will be postponed;
- if a party has given no indication about appearing and there is no apparent reason for the failure then the hearing will proceed and the Moray Licensing Board will make such decision as it thinks fit in the absence of that party;
- if a party leaves a hearing in circumstances such that it can reasonably be inferred that they do not wish to take any further part then the hearing will proceed and the Moray Licensing Board will make such decision as it thinks fit in the absence of that party;
- a hearing will normally only be postponed on one occasion.

Where a hearing proceeds in the absence of a party, the Board will consider at the hearing the application or any representations made by that party.

Where a hearing is postponed to a specified date the Board will, as soon as reasonably practicable, notify the parties of the date, time and place to which the hearing has been adjourned.

5.4 Power to Postpone at Any Time

The Moray Licensing Board may at any time postpone a hearing to a specified date (even if parties are in attendance). The Board may postpone a hearing for any reason including the following*:

- to enable it to consider any information or documents provided by any party in response to a notice or at a hearing; or
- having regard to the ability of any party, person representing a party or a witness to attend the hearing; or
- for a site visit; or
- to call for further information; or
- to provide fairness between the parties where one party requires time to consider the evidence of another; or
- in the interests of natural justice in general

*List is not exhaustive

Where the Board has postponed a hearing to a specified date it will, as soon as reasonably practicable, notify the parties of the new date, time and place of the hearing.

6. Hearings

6.1 General

The Moray Licensing Board will always endeavour to ensure that the rules of natural justice are observed.

6.2 Hearings to be in Public

In accordance with paragraph 12 of Schedule 1 of the Licensing (Scotland) Act 2005 hearings will generally be conducted in public although The Moray Licensing Board may deliberate in private.

This means that any person attending or evidence to be provided to the Moray Licensing Board will be heard in public and made available to the public.

Agendas, minutes and other relevant documents will be published in accordance with the Moray Licensing Board's scheme of publication (available on the website at www.moray.gov.uk/licensing).

In exceptional circumstances, for example to protect a particular person (particularly a minor) or possibly a commercial interest, a party may request that a hearing be conducted in private. This should be raised as a preliminary matter before the hearing, preferably with the Clerk before the actual day of the Board meeting. Consideration will be given to this having regard to the interests of natural justice, fairness and potential prejudice to other parties or the public.

6.3 Conducting a Hearing

In general a hearing will take the form of a discussion led by The Moray Licensing Board and in particular the Convenor. The Moray Licensing Board wishes to create, as far as possible, a less formal and more relaxed atmosphere so as not to intimidate parties.

Each party will have the opportunity to address the Board and present evidence.

At the beginning of the hearing the Board will endeavour to explain the procedure that it proposes to follow in conducting the hearing.

For convenience, in general the running order will be as follows:

- The application will be introduced. This may be by the Convenor and/or the applicant may be invited to confirm their status, the nature of the application and any initial comment;
- The Clerk or Depute will advise the Board of the existence of any objections or representations or other relevant issues and distribute any necessary documents to members;
- Any party that has made representations on the application will be invited to present their case;
- The applicant will then have an opportunity to present their case in more detail and respond to any points raised;
- Members may also ask questions for clarification purposes, through the Convenor, at any time during or after the presentations;
- First the representer(s) and then the applicant will have chance to deal with any new evidence and/or final points arising from the prior evidence;
- The Convenor will then invite further questions from members of the Board;
- The representer(s) will have an opportunity to sum up;
- The applicant will have the last word to respond to any outstanding points and sum up;
- The Board may request legal advice from the Clerk or Depute at any time. The Board may also decide to retire to receive advice and/or deliberate.

6.4 Evidence and Presenting a Case

In general:

- It is up to the party to present their case. Presentation of a case may be through the use of documents (provided before the start of the hearing – see para 4 above), the attendance of witnesses, oral or written submissions or a combination thereof;
- Cross examination will not generally be allowed in respect of other parties' witnesses as this is not conducive to a less formal procedure;
- Hearsay evidence is admissible;
- No new evidence should be introduced when a party is summing up;

The Moray Licensing Board will retain a general discretion, where it is considered appropriate, to depart from the foregoing and/or disregard procedural errors and/or remedy prejudice to any party.

6.5 Exclusion of Disruptive Persons

Where a person is behaving in a disruptive manner the Board may:

- require that person to leave the hearing and not return; or
- permit that person to remain or return only on such conditions as the Board may specify.

Where a person is required to leave the hearing the Board will instead:

- permit him to submit in writing, before the end of the hearing, any information which he would have been entitled to give orally had he not been required to leave; and
- take into account that information in reaching a determination.

7. Procedure where a Hearing is Not to Take Place

Where a hearing is not required by the Act the Moray Licensing Board will endeavour to canvass and account for the views of the parties on the desirability of holding a hearing, although the Moray Licensing Board will not be bound by those views.

Where it has been decided that a matter can be determined without a hearing (with or without consent of the parties) the Board will, as soon as reasonably practicable:

- notify all the parties that the hearing has been dispensed with; and
- determine the application or review.

Where the Licensing Board does not hold a hearing, in an instance where there is an option to hold a hearing, the Board will ensure that all relevant parties have the opportunity to state their case, in particular the applicant will have a chance to respond to any Police or Licensing Standards Officer observations.

8. Record of Proceedings

The will endeavour to ensure that a record of the hearing is taken in a permanent and intelligible form.

Hearings are not generally recorded and a transcript will not be available. However, hearings may sometimes be recorded for training purposes.

Any such record is normally kept for a period of six years from the date that the matter is finally determined (including any appeal).

Please see the Board's publication scheme for detailed information.

9. Irregularities & Clerical Mistakes

The Board may disregard any irregularity resulting from a failure to comply with a provision of this appendix, or with a procedure otherwise determined by the Board, where that irregularity comes to its attention prior to it making a determination of the matter in hand.

If the Board considers that any person may have been prejudiced by any such irregularity, it must take such steps that it considers necessary to remedy the consequences of the irregularity, before reaching its determination.

The Board may correct clerical mistakes in any document recording a determination of the Board, or errors arising in such a document from an accidental slip or omission.

The Board may also correct mistakes and clarify matters arising from accidental slips or omissions. If necessary this may be by:

- recalling a determination for further consideration, which may be with or without a further hearing;
- such other method as the Board may deem suitable.