

WEST LoTHIAN LICENSING BOARD

RULES MADE UNDER PARAGRAPHS 12(5) AND (6) OF THE LICENSING (SCOTLAND) ACT 2005

INTRODUCTION

By virtue of paragraphs 12(5) and (6) of schedule 1 of the 2005 Act, the arrangements for meetings of a Licensing Board, and other matters relating to the proceedings of the Board, are to be such as the Board may by rules provide, and any such rules must be published.

The Board has decided to exercise the power available to it under paragraph 12(5) of the 2005 Act to make the following general rules in relation to Board proceedings:

1. Regularity of Board meetings and hours of business
2. Formality of proceedings
3. Obligation to tell the truth
4. Communication
5. The significance of the 5 licensing objectives
6. Identification of disputed facts

The Board also wishes to ensure that all evidential hearings before it are conducted in the interests of justice, and that associated principles of due process, fair notice and procedural fairness are observed. As such, the Board has decided to exercise the power available to it under paragraph 12(5) of the 2005 Act to make the following rules for review applications involving disputed questions of fact:

7. Where an evidential hearing may be required
8. First calling of a review application and scheduling of evidential hearing
9. Burden and standard of proof
10. Prior to the hearing
11. At the hearing
12. Conduct of hearings

The Board has also decided to exercise the power available to it under paragraph 12(5) of the 2005 Act to make the following additional rules:

13. Closure orders
14. Irregularity
15. Waiver or variation of certain rules

This document also contains an appendix listing the relevant sections of the 2005 Act, whether the Board must or may hold a hearing, and the time limit for doing so prescribed under the Licensing (Procedure) (Scotland) Regulations 2007.

1. Regularity of Board meetings and hours of business

The Board meets monthly.

The Board will hold hearings between the hours of 10 am and 4 pm. Every effort will be made to identify the number of days hearings are reasonably expected to take when they are scheduled and the Board will welcome the views of parties in this regard.

2. Formality of hearings

Hearings before the Board are formal and parties attending are expected to show respect to others and for the proceedings themselves.

3. Obligation to tell the truth

Evidence is not given under oath but witnesses are required to tell the truth at all times. Failure to do so could impact significantly on the weight given to evidence by the Board.

4. Communication

In general communication will be accepted by letter sent by post or email. All communication should be addressed:

In writing to: The Depute Clerk to the Board
 West Lothian Council
 West Lothian Civic Centre
 Howden South Road
 Livingston
 EH54 6FF

By email to: licensingboard@westlothian.gov.uk

5. The significance of the 5 Licensing Objectives

The Board recognises that the legal test to be applied to licensing matters under the 2005 often refers to the 5 Licensing Objectives. For all such matters the Board expects any evidence put before it and representations and submissions made, both legal and factual, to focus on the relevant part of the 2005 Act, and for parties to be able to identify and explain the relevance of their evidence, representations and submissions in relation to the 5 Licensing Objectives, as appropriate.

6. Identification of disputed facts

The Board expects all parties to a licensing matter (including, in particular, a review application) to endeavour to identify disputed facts arising in respect of the matter at the earliest opportunity, and to notify the Clerk at the earliest opportunity upon doing so, either stating their own position, or clarifying the point in dispute arising, should their own position already have been stated. The Board emphasises that such notification should be provided as early as possible prior to hearing of the matter before the Board. Notification should be given in writing wherever possible, unless the disputed fact is identified during the course of a Board meeting, in which case notification should be given during the hearing or in writing as soon as possible thereafter.

7. First calling of a review application and scheduling of evidential hearing

The Board understands that the statutory timescales for the hearing of review applications may not allow for the steps referred to in rule 6 above to be taken before the application is first called. The Board may require to adjourn a review application to a future date in order to allow the associated work forming a necessary part of the preparation of the parties to be undertaken for the evidential hearing.

8. Where an evidential hearing may be required

Where in relation to a review application disputed facts arise, the Board will endeavour to canvas the views of the parties on the necessity of holding an evidential hearing. The Board reserves its discretion to determine whether a hearing is or is not required. In cases where the Board determines that a hearing is not required, the Board will ensure that parties are aware of one another's respective positions and have had the opportunity to state their case in writing before the matter is determined.

9. Burden and standard of proof

In proceedings before the Board the burden of proof falls on the applicant. The standard of proof is the balance of probabilities.

10. Prior to the hearing

10.1 Notice of evidential hearing

The Board shall give notice of the evidential hearing to be held in relation to a review application. The notice shall specify:

- a. the date, time and place at which the hearing is to take place;
- b. that the Board shall make available the documents relevant to the hearing to the parties (unless in relation to an objection or representation is considered by the Board to be vexatious or frivolous); and
- c. that the Board may consider the subject matter of the hearing in the absence of any party, should that party fail to attend the hearing.

10.2 Issue of notice

The notice of hearing issued by the Board under rule 10.1 above shall be issued not later than 7 days prior to the date of the evidential hearing.

10.3 Information and documents to accompany notice of hearing

The notice of hearing shall be accompanied by a copy of this document.

10.4 Exchange of evidence

In any case where evidence is to be produced by a party in relation to any matter before the Board, notification of:

- a. the documentary evidence (in the widest sense) that any party intends to adduce at a hearing, including a copy of that evidence in electronic or paper form;
- b. any additional evidence; and
- c. the name, occupation and address of any witness whose evidence is to be led,

together with

- d. copies of any authorities to be relied upon by that party

shall be sent to the other parties and to the Clerk not less than 7 days prior to the date of the hearing at which the evidence is to be led.

10.5 Calling for legal documentation

The Board may call upon parties to produce such further legal documentation as the Board may consider of assistance in determining the matter concerned. Such documentation may include, but is not limited to:

- a. Statements of fact and/ or law (including Joint Statements);
- b. Notes on Lines of Argument;
- c. Witness Summaries and/ or Statements; and
- d. Written submissions

In any case where parties are called upon to produce any such legal documentation, they shall be called upon to do so not later than 14 days prior to the date of the hearing at which the matter is to be determined, and shall send to the other parties and to the Clerk a copy of the documentation requested, in electronic or paper form, by a date to be determined by the Board, which shall not be less than 7 days prior to the date of the hearing at which the matter is to be determined.

10.6 Calling for further evidence

Prior to the hearing of any licensing matter the Board may call upon:

- a. such person(s) to attend the hearing; and/or
- b. production of such documentary evidence (in the widest sense) and/ or any additional evidence for the purpose of the hearing

as the Board sees fit, where the Board considers that the presence of such person(s) and/ or production of such document(s) and/ or additional evidence will be of assistance in considering the matter concerned.

In any case where any such person(s) are called to attend and/ or parties are called upon to produce any such document(s) and/ or additional evidence, they shall be called upon to do so not later than 14 days prior to the date of the hearing at which the matter is to be determined, and shall send to the other parties and to the Clerk written notice of confirmation of attendance of the person(s) called to attend and/ or written notification of the documentary evidence and/ or additional evidence called for (including a copy in electronic or paper form) not less than 7 days prior to the date of the hearing at which the matter is to be determined.

10.7 Withdrawal of objection or representation

If a party has made objection or representation and wishes to withdraw the same, they should do so by indicating this to the Clerk in writing no later than 7 days prior to the date of the evidential hearing.

11. At the hearing

11.1 Attendance

Parties should attend or be represented at the hearing 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 written authority, confirming his or her authority to do so.

11.2 Failure to appear

Where a party fails to appear or be represented at a hearing the Board will decide whether to proceed with the hearing in their absence or to adjourn the matter to a future date. Each matter will be considered on its own merits. However, in general:

- 11.2.1 if a party has indicated an inability to appear at a hearing and has given a reason for that inability which the Board, in its discretion, considers to appear genuine, a request for an adjournment will normally be granted;
- 11.2.2 if a party has indicated an intention to appear but fails to do so, the hearing of the application will normally be adjourned;
- 11.2.3 if a party has given no notice of intention to appear and there is no apparent reason for the failure, the hearing will normally proceed and the Board will normally make such decision as it thinks fit in the absence of that party;
- 11.2.4 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 in it, the hearing will normally proceed and the Board will normally make such decision as it thinks fit in the absence of that party; and
- 11.2.5 a hearing will normally only be adjourned on one occasion based on failure to appear.

Where a hearing proceeds in the absence of any party, the Board will consider the application or any representation or objection made by that party (other than those which the Board, in its discretion, considers to be vexatious or frivolous).

11.3 Power to adjourn at any time

The Board may at any time adjourn a hearing to a specified date (whether or not parties are in attendance). The Board may adjourn a hearing for any reason including (but not limited to):

11.3.1 to enable the Board and other parties to consider any information or documents produced by any party, either in response to a notice or at the hearing;

11.3.2 to enable any party, person representing a party or a witness to attend the hearing;

11.3.3 to enable the Board to carry out a site visit;

11.3.4 to enable the Board to identify the terms of a call upon a party or person under rule 10.6 and to make that call and/or to enable a party to respond to any such call made during the course of the hearing; or

11.3.5 where necessary in the interests of justice in general.

12. Conduct of hearings

12.1 Hearings to be in public

In accordance with paragraphs 12(2) and (3) of schedule 1 to the 2005 Act, meetings of the Board will be held in public and members of the Board may, before the Board decides any matter, conduct their deliberations on the matter in private.

12.2 Spirit in which hearings to be conducted

In general terms, the Board wishes to promote a constructive, positive atmosphere which is most conducive to parties providing the information and documentation they consider will assist the Board in determining the matter concerned. At the beginning of the hearing, the Chair will explain the procedure to be followed in conducting the hearing. All Board decisions will be taken in public. Each party will have the opportunity to address the Board.

12.3 Evidence and presenting a case

Parties are responsible for presenting their case and are reminded that the role of the Clerk is to provide legal advice to the Board.

Subject to the foregoing paragraphs, presentation of a case may be through the use of documents or other media, witness evidence and oral or written submissions, or a combination thereof.

The Board wishes to emphasise that it is impossible for the full range of evidential issues which may transpire in a case to be contemplated in advance. The Board, in general terms, will generally apply the following principles where witness evidence before it is led:

12.3.1 Cross examination will generally be permitted. Parties are reminded of rule 12.2.

12.3.2 Hearsay evidence will generally be treated as admissible. Parties are reminded that the weight to be ascribed to such evidence will be a matter for the Board's discretion and will depend upon the particular facts and circumstances of the case, whether the evidence is accepted or contested.

12.3.3 No new lines of argument or evidence should be introduced when a party is summing up.

12.4 Exclusion of disruptive persons

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

12.4.1 require that person to leave the hearing and not to return; or

12.4.2 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 under rule 12.4.1 the Board shall:

12.4.3 permit that person to submit in writing, before the end of the hearing, any information which he or she would have been entitled to give orally had he or she not been required to leave; and

12.4.4 take into account that information in determining the matter concerned.

13. Closure orders

The Board recognises that certain provisions of the 2005 Act can give rise to applications of an urgent nature in relation to public safety. The Board also recognises that it may not be possible to follow the same monthly timetable for Board meetings, and procedures and timescales applicable to other areas of Board business, in such cases. Given the potential for such applications to fall outwith the regular scope of Board business, the Board emphasises that it is imperative that the Clerk is given advance notice of the intended making of the application as early as possible, in order that appropriate arrangements can be made for determination of the application concerned.

14. Irregularity

The Board may disregard any irregularity resulting from a failure to comply with these rules, or with a procedure otherwise determined by the Board, where that irregularity comes to the Board's attention prior to its decision regarding the matter concerned.

15. Waiver or variation of certain rules

The Board may from time to time dispense with any requirements of these rules, where it appears to the Board to be fair and reasonable to do so. The Board may extend or, with the consent of parties, reduce the time for doing anything under these rules.

These rules are subject to such orders or regulations under the 2005 Act as the Scottish Ministers may make.

Appendix 1

The table below lists the relevant sections of the 2005 Act, whether the Board must or may hold a hearing, and the time limit for doing so prescribed under the Licensing (Procedure) (Scotland) Regulations 2007:

Premises Licences			
Section	Type of application	Hearing	Time limit
Section 23(2)	Application for premises licence or provisional premises licence (note: does not include application for confirmation of provisional premises licence)	Must hold a hearing for the purpose of considering and determining the application	119 days after the last day on which objections can be lodged
Section 30(3)	Application for variation	Must hold a hearing for the purpose of considering and determining the application	119 days after the last day on which objections can be lodged
Section 33(9)	Application for transfer of premises licence where relevant notice received from chief constable	Must hold a hearing for the purpose of considering and determining the application	42 days after date of receipt of notice
Section 34(4)	Application for transfer of premises licence by person other than licence holder where relevant notice received from chief constable	Must hold a hearing for the purpose of considering and determining the application	42 days after date of receipt of notice
Section 38(1)	Review of premises licence following making of premises licence review	Must hold a hearing for the purpose of considering and determining the	42 days after date when proposal made or application received

	proposal or receipt of premises licence review application	proposal or application unless, in the case of an application, the application has been rejected under section 36(6)	
Section 59(4)	Application for occasional licence where report from a Licensing Standards Officer or notice of objection or representation received	May hold a hearing for purposes of determining application	42 days after date of receipt of application
Section 70(2)	Application for extended hours	May hold a hearing for purposes of determining application	42 days after date of receipt of application
Personal Licences			
Section 74(5)	Application for personal licence where relevant notice received from chief constable	Must hold a hearing for the purpose of considering and determining the application	42 days after date of receipt of notice from chief constable
Section 74(5A)	Application for personal licence where relevant notice received from chief constable	May hold a hearing for the purpose of considering and determining the application	42 days after date of receipt of notice from chief constable
Section 75(8)	Application for personal licence where relevant notice received from applicant and from chief constable	Sections 74(5) and 74(5)(A) above apply	42 days after date of receipt of notice from chief constable
Section 83(7)	Receipt of notice of	Must hold a hearing	42 days after date of

	conviction relating to personal licence holder or becoming aware that personal licence holder was, during application period, convicted of relevant or foreign offence, and receipt of relevant notice from chief constable		receipt of notice under section 83(4)(b)
Section 84(5)	Finding that personal licence holder while working in licensed premises in respect of which premises licence subject to review hearing was issued, acted in a manner inconsistent with any of the licensing objectives	Must hold a hearing if the personal licence holder concerned is, at the time of the finding, working in licensed premises in the Board's area	N/A
Section 84A(2)	Report from chief constable who considers that personal licence holder has acted in a manner which is inconsistent with any of the licensing objectives	Must hold a hearing	N/A
Section 86 (1)	3 endorsements on personal licence	Must hold a hearing	N/A
Occasional Licences*			
Section 59(4)	Application for occasional licence where relevant notice from chief constable, report from licensing	May hold a hearing for the purposes of determining whether any of the grounds for refusal applies	42 days after date of receipt of application

	standards officer and/ or notice of objection or representation received		
Applications for extended hours*			
Section 70(2)		May hold a hearing for the purpose of determining the application	42 days after date of receipt of application

*In accordance with the Board Policy Statement, applications for occasional licences and extended hours are normally determined under delegated powers, without the need for a Board hearing