

## **WEST Lothian LICENSING BOARD**

### **INFORMATION FOR LICENCE HOLDERS AND THOSE WORKING IN LICENSED PREMISES**

The West Lothian Council's website contains detailed information on alcohol licensing. There are a variety of webpages explaining the role of the Licensing Board, Licensing Standards Officer (LSO) and the West Lothian Licensing Forum. Individual webpages are devoted to different types of application, the process of reviewing licences and training.

If you type the following address into your search engine, this will take you to the main Licensing Board web page, from where you can choose a link on the left to access Licensing Board information: [www.westlothian.gov.uk/article/2011/Alcohol-Licences](http://www.westlothian.gov.uk/article/2011/Alcohol-Licences).

#### **Role of the Licensing Board in relation to alcohol licences**

The Board is responsible for administering and determining applications for premises, personal and occasional licences and for extended hours. The Board is required to publish a policy document every 5 years to highlight to licence holders and prospective licence holders what local policy is. The Board has regard to the policy when considering applications. The policy can be found in the Related Documents section of the above webpage.

Following review proceedings which may be instigated by the Board, Police Scotland or any member of the public the Board also has powers to –

- vary, suspend or revoke premises licences or issue warnings to premises licence holders.
- endorse, suspend or revoke personal licences

#### **Role of the Licensing Standards Officer (LSO)**

The LSO has a statutory role under the Licensing (Scotland) Act 2005 which includes:

- providing guidance to licence holders, prospective licence holders and members of the public on the legislation and on West Lothian Licensing Board policy;
- supervising compliance with the conditions on which licences are granted;
- ensuring premises are being run in accordance with operating plans submitted to the Board for approval; and
- providing a mediation service where disputes have arisen between the licence holder or any other person(s).

The LSO carries out visits to licensed premises to check that the conditions of licences are being complied with and that premises are being operated in accordance with the details contained in the operating plans and layout plans which are part of the licence. The purpose of the licence documentation is to assist you in running your premises properly and the LSO will expect all staff to be familiar with all parts of the licence. The LSO has power to serve notices on premises licence holders and can apply to the Licensing Board for a review of any licence where there has been a failure to comply with a notice.

## LSO Visits

The LSO will:

- check that the summary of your licence is displayed in your premises and that the rest of the licence is kept at the premises;
- check notices, promotions and pricing;
- speak to staff and ask them about how they operate Challenge 25;
- check your DPM's details;
- look at your refusal register and training records; and
- check your premises are being operated as detailed in the operating plan and that the layout of your premises is still the same as shown in the layout plan attached to your licence.

The LSO must also be a member of the local Licensing Forum.

### **Role of the Licensing Forum**

The Forum is not a policy-making or a decision-making body. The Forum's role is to keep under review the operation of the Licensing (Scotland) Act 2005 in the West Lothian area and the way the Board operates the Act, and to give advice and make recommendations to the Board in relation to those matters. That must be done at a policy level as the Forum cannot comment on individual cases.

### **Premises licence holders - how you can ensure that you are complying with your legal requirements**

- ensure that the DPM listed on your licence is still working at the premises and authorising the sale of all alcohol
- act immediately when the DPM leaves your premises (see pages 5-6 below)
- ensure that your premises is operated according to the operating plan and layout plan, these documents or certified copies of them must be kept on the premises and all staff should be aware of them
- ensure that applications are made to vary your licence when the operation of your premises and /or the layout changes (see page 3 below)
- ensure that all staff are trained as required and that training records are kept at the premises

### **Personal licence holders - how you can ensure that you are complying with your legal requirements**

Everyone who works in licensed premises should be aware of the mandatory conditions which apply to all licences, any special conditions which apply to the premises they are working in, their responsibilities in relation to the sale of alcohol and the various licensing offences created by the 2005 Act. It is not the case that only designated premises managers (DPMs) can be prosecuted in the criminal courts or have their licences endorsed, suspended or revoked by the Board. Anyone involved in the sale of alcohol may be prosecuted for most licensing offences and anyone holding a personal licence can have their licence reviewed by the Board if they commit a relevant offence or their conduct is inconsistent with the five licensing objectives.

## How can you ensure that your application is dealt with as quickly as possible?

Make sure your application form is:

- completed properly;
- signed by the correct person;
- all required documents and the correct fee are enclosed with it; and
- sent to the Board or submitted at West Lothian Connected as explained in the guidance notes.

All applicants are encouraged to refer to the guidance notes attached to application forms before making their application, to ensure that they are entitled to make the application (most applications require to be made by the premises licence holder or their agent), and that the form they are using is the appropriate one for the application they wish to make.

To ensure that applicants have access to these guidance notes we ask all applicants to use the Board's up to date application forms currently available on the Board's webpages. Alternatively paper copies of the forms are available from the Civic Centre reception or can be posted on request. Contact details including the address for the Board's web pages are contained at the bottom of this document.

The full original premises licence must be enclosed with all premises licence applications which, for all applications, means the premises licence, summary premises licence, operating plan and the layout plan. When your application has been processed you will be issued with a full new premises licence. Please also provide us with a telephone number and email address in your application, in order that we can contact you quickly regarding your application, if required.

All applicants should consider these requirements carefully as, if applications are not submitted correctly and/ or are incomplete, they will be returned to applicants and their agents, and will have to be resubmitted. In the case of the leaving and appointment of a premises manager, this may result in premises being unable to lawfully sell alcohol until the matter is further addressed (please see pages 5 and 6 below).

### Variations to your premises licence

If you wish to change the operation of your premises, you will require to submit a variation application to change the relevant details of the way in which your premises operate, as contained in the operating plan and/ or layout plan which form part of your premises licence.

The following changes can be made by a **minor variation application** which, by law, must be granted, and so does not require to be referred to the Board for a decision to be taken by the Board. These include:-

1. Any variation of the layout plan which does not result in any inconsistency with the operating plan.
2. Any restriction of the terms on which children/young persons are allowed entry to the premises.
3. Any variation of the information relating to the premises manager (including substitution of a new premises manager).
4. Any change in the name of the premises.
5. Any reduction in the licensed hours which does not result in the premises opening any earlier or closing any later.

6. Any increase in the minimum age at which children/young persons may be allowed onto the premises.
7. Any reduction in the times at which children/young persons are allowed onto the premises.
8. Any restriction in the access of children/young persons to certain parts of the premises.
9. Any reduction in the capacity of the premises whether resulting from a variation to the layout plan or otherwise.
10. Any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels;
11. Any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing.

All other changes must be made by a **non-minor (or major) variation application**, which must be advertised and referred to the Board for a decision to be taken as to whether or not to grant the application. Accordingly these applications take several months to be processed.

Guidance regarding the operation of your premises and submitting applications is available from the LSO. The best way to contact the LSO is by emailing [LSO@westlothian.gov.uk](mailto:LSO@westlothian.gov.uk) or by leaving a message on 01506 281632.

### **Premises Licence Holders – what do you need to tell the Board?**

#### Change of Address/ Connected Persons

It is a legal requirement that licence holders notify the Board of any change of name or address of either yourself as licence holder, a connected person, if applicable, or the DPM within one month of the change. It is a criminal offence to fail to do so. There is no fee for this and it assists the team in keeping you informed of any important information regarding your licence. The full premises licence must be returned to the Board (premises licence, summary premises licence, operating plan and layout plan) with written notification of the change. If the identity of the licence holder is changing i.e. the licence is to go from being held by one person, company etc. to another, a notification is not appropriate and a transfer application is required.

#### Convictions

If you are convicted of any relevant offence you must advise the court that you are a premises licence holder. You must also notify the Board of any convictions for any relevant or foreign offences (a list of these is attached at pages 7 onwards) and failing to advise the court and notify the Board are also criminal offences. The Board must at the request of Police Scotland review your licence and this can result in a warning, a variation of your licence, suspension or revocation of the premises licence.

#### Changes to your premises

This includes a change in DPM or any change in how your premises are operated (see page 3 above).

It would also assist the Board if telephone numbers and e-mail addresses are kept up to date. These can be e-mailed to [licensingboard@westlothian.gov.uk](mailto:licensingboard@westlothian.gov.uk).

## **Personal licence holders - what do you need to tell the Board?**

### Training/ Renewing your licence

Personal licence holders need to do refresher training every 5 years and renew their licences every 10 years. It is a legal requirement that personal licence holders notify the Board of any change of their name or address within one month of the change. It is a criminal offence to fail to do so. Your original personal licence must be returned to the Board with written notification of the change. There is no fee for this and it assists the team in keeping you informed of any important information regarding your licence and will allow us to send you a reminder when your licence is due to be renewed.

### Convictions

If a personal licence holder is convicted of any relevant offence (a list of these is attached) they must advise the court that they hold a personal licence. They must also notify the Board of any convictions for any relevant or foreign offences (see list) and failing to advise the court and notify the Board are also criminal offences. The Board must at the request of Police Scotland review the personal licence and this can result in the licence being endorsed, suspended or revoked.

It would also assist the Board if telephone numbers and e-mail addresses are kept up to date. These can be e-mailed to [licensingboard@westlothian.gov.uk](mailto:licensingboard@westlothian.gov.uk).

## **Premises licence holders - advising the Board that your DPM has left**

For many licensed premises the DPM named in the premises licence is an employee, whose employment status may change at some point. Alcohol can normally only be sold at your premises when your DPM is still working at your premises. However, by law there are steps you can take which will enable you to sell alcohol although your DPM has left. The premises licence holder should advise the Board in writing immediately when the DPM stops working at the premises.

If you give written notice to us that your DPM has left not later than seven days after the date on which they have left, by law there will then be a period of five weeks from the end of the first seven days for you to apply to nominate a new DPM, in which period you can continue to sell alcohol. However, if at the end of the five weeks you have not applied to nominate a new DPM, effective either immediately or before the expiry of the five weeks, your premises licence will be varied to contain details of no DPM. You will then be unable to sell alcohol lawfully until a valid application to nominate a new DPM is received, and is either effectively immediately or becomes effective.

By law these same requirements and timescales also apply to other circumstances affecting your DPM, including if they have otherwise become incapable of acting as DPM (which includes if their personal licence has been revoked or suspended).

The Board has a notification form which we strongly recommend you use to ensure that all of the required information is provided. Please note that notification must be given by the licence holder and there is no fee for this. You can download the form by typing the following web address into your internet browser:

<http://www.westlothian.gov.uk/media/982/Notification-of-Dismissal-Resignation-Death-etc-of-Premises-Manager-Section-54/pdf/section54.pdf>

Other forms of notification will also be accepted; however, please note that the following information must be provided:

- premises details
- premises licence holder details
- event e.g. DPM has ceased to work at the premises or death of DPM
- date of event e.g. the exact date when the manager stopped working at the premises

### **Applications to nominate a new DPM**

You can download an application form to nominate a new DPM by typing the following web address into your internet browser:

<http://www.westlothian.gov.uk/media/1020/Application-for-Variation-of-Premises-Licence-to-Intimate-a-New-Premises-Manager/pdf/applicationofvariation>

Applications to nominate a new DPM can take effect immediately if this is specified in the application (see application form question 6). Only valid applications can be accepted i.e. the application form is completed in full, contains accurate information and the correct fee is enclosed. Please refer to the guidance notes to ensure the form is submitted correctly. Incomplete applications will be returned and, if such an application has been made to take immediate effect, it cannot take effect immediately.

Please contact the Licensing Team about alcohol licensing issues by emailing [licensingboard@westlothian.gov.uk](mailto:licensingboard@westlothian.gov.uk)

or by writing to us at -

West Lothian Civic Centre  
West Lothian Licensing Board  
Howden south road,  
Livingston  
EH54 6FF

Tel 01506 281632

(if you are diverted to our voicemail please leave a message and we will return your call as soon as we can)

**Licensing Team**  
**4 October 2016**

## **List of relevant and foreign offences under the Licensing (Relevant Offences) (Scotland) Regulations 2007**

### **Introduction**

Under Regulation 2 of the above Regulations “relevant offence” means–

- (a) any offence specified in Part 1, 2 or 3 below;
- (b) any offence which–
  - (i) was provided for in an enactment which is no longer in force; and
  - (ii) was similar in nature to an offence specified below;
- (c) any offence in respect of aiding and abetting, inciting, counselling or procuring any offence referred to in paragraph (a) or (b); and
- (d) any other offence in respect of which a sentence of imprisonment was imposed.

Under section 129(2) of the 2005 Act “foreign offence” means any offence:

- (a) under the law of any place other than Scotland; and
- (b) which is similar in nature to any relevant offence.

Under section 129(4) of the 2005 Act a conviction for a relevant or a foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974.

Under section 129(5) of the 2005 Act, (for the purposes of the provisions of the 2005 Act specified in section 129(6)), sections 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (convictions deemed not to be convictions where offender placed on probation or discharged absolutely) do not apply to a conviction for a relevant or foreign offence.

### **Part 1 – Violent and sexual offences**

1. Any offence inferring personal violence.
2. Any offence which is a “sexual offence” within the meaning of subsection (10) of section 210A of the Criminal Procedure (Scotland) Act 1995 (c.46), as read with subsection (11) of that section.

### **Part 2 – Other statutory offences**

3. An offence under article 38 of the Pharmacy Order 2010.
4. An offence under the Betting, Gaming and Lotteries Act 1963.
5. An offence under the Firearms Act 1968.
6. An offence under section 1 of the Trade Descriptions Act 1968 (c.29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.

7. An offence under section 13 of the Theatres Act 1968 (c.54) (performance of play in unlicensed premises).
8. An offence under section 7(2) of the Gaming Act 1968 (c.65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).
9. An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c.38)–
  - (a) section 4(2) (production of a controlled drug);
  - (b) section 4(3) (supply of a controlled drug);
  - (c) section 5(2) (possession of a controlled drug);
  - (d) section 5(3) (possession of a controlled drug with intent to supply);
  - (e) section 8 (permitting activities to take place on premises);
  - (f) section 23(4) (offence in connection with powers to search and obtain evidence).
10. An offence under the Immigration Act 1971 (c.77).
11. An offence under the Poisons Act 1972 (c.66).
12. An offence under the Health and Safety at Work etc. Act 1974 (c.37).
13. An offence under the Lotteries and Amusements Act 1976 (c.32).
14. An offence under the Licensing (Scotland) Act 1976 (c.66).
15. An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c.2)–
  - (a) section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc.);
  - (b) section 170B (taking preparatory steps for evasion of duty).
16. An offence under the Alcoholic Liquor Duties Act 1979 (c.4).
17. An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c.7)–
  - (a) section 8G (possession and sale of unmarked tobacco);
  - (b) section 8H (use of premises for sale of unmarked tobacco).
18. An offence under Part II of the Forgery and Counterfeiting Act 1981 (c.45).



19. An offence under any of the following provisions of the Civic Government (Scotland) Act 1982 (c.45)–
- (a) section 7 (offences), so far as relating to public entertainment licences under section
  - (b) section 21(1), (4), (5) or (6) (offences in relation to taxis and private hire cars);
  - (c) section 27D (provision of information to holder of knife dealer's licence);
  - (d) section 27F (powers of constables and authorised officers);
  - (e) section 27G (power to inspect documents);
  - (f) section 50 (drunkenness);
  - (g) section 57 (being in or on buildings etc. with intent to commit theft);
  - (h) Part V (public processions).
20. An offence under the Cinemas Act 1985 (c.13).
21. An offence under Part I of the Food and Environment Protection Act 1985 (c.48).
22. An offence under either of the following provisions of Schedule 2B to the Gas Act 1986 (c.44)–
- (a) paragraph 10 (injury to gas fittings and interference with meters);
  - (b) paragraph 11 (restoration of supply without consent).
23. An offence under the Company Directors Disqualification Act 1986 (c.46).
24. An offence under the Public Order Act 1986 (c.64).
25. An offence under the Crossbows Act 1987 (c.32).
26. An offence under the Firearms (Amendment) Act 1988 (c.45).
27. An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c.48)–
- (a) section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);
  - (b) section 107(3) (infringement of copyright by public performance of work etc.);

- (c) section 198(2) (broadcast etc. of recording of performance made without sufficient consent);
  - (d) section 297(1) (fraudulent reception of transmission);
  - (e) section 297A(1) (supply of unauthorised decoder).
28. An offence under any of the following provisions of the Road Traffic Act 1988 (c.52)–
- (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
  - (b) section 4 (driving etc. a vehicle when under the influence of drink or drugs);
  - (c) section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit);
  - (d) section 178 (taking motor vehicle without authority, etc.).
29. An offence under either of the following provisions of the Electricity Act 1989 (c.29)–
- (a) paragraph 3 of Schedule 6 (restoration of supply without consent);
  - (b) paragraph 8 of Schedule 6 (provision as to power of entry);
  - (c) paragraph 11 of Schedule 7 (interference with meters).
30. An offence under either of the following provisions of the Food Safety Act 1990 (c.16) in circumstances where the food in question is or includes alcohol–
- (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
  - (b) section 15 (falsely describing or presenting food or drink).
31. An offence under the National Lottery Etc. Act 1993 (c.39).
32. An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c.26) (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.
33. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)–
- (a) section 19 (alcohol on vehicles);
  - (b) section 20 (sporting events: control);
  - (c) section 44 (false statements and declarations);

- (d) section 47 (prohibition of the carrying of offensive weapons);
  - (e) section 49 (offence of having in public place article with blade or point);
  - (f) section 49A (offence of having article with blade or point (or offensive weapon) on school premises).
34. An offence under section 3 of the Private Security Industry Act 2001 (c.12) (conduct prohibited without a licence).
  35. An offence under the Proceeds of Crime Act 2002 (c.29).
  36. An offence under the Building (Scotland) Act 2003 (asp 8).
  37. An offence under the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
  38. An offence under the Breastfeeding etc. (Scotland) Act 2005 (asp 1).
  39. An offence under the Fire (Scotland) Act 2005 (asp 5).
  40. An offence under either of the following provisions of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)–
    - (a) section 1 (offence of permitting others to smoke in no-smoking premises);
    - (b) section 2 (offence of smoking in no-smoking premises).
  41. An offence under the Licensing (Scotland) Act 2005 (asp 16).
  42. An offence under the Prevention of Terrorism Act 2005 (c.2).
  43. An offence under section 46 of the Gambling Act 2005 (c.19) (invitation to gamble).
  44. An offence under the Terrorism Act 2006 (c.11).
  45. An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.
  46. An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.

### **Part 3 – Other common law offences**

NOTE: the numbering reflects the legislation (see next page)

45. The offences at common law of–

- (a) theft;
- (b) theft by housebreaking;
- (c) fraud;
- (d) uttering;
- (e) fraud and uttering;
- (f) extortion;
- (g) abduction;
- (h) reset; and
- (i) conspiracy to defraud.

46. The offences at common law of–

- (a) wilful fireraising;
- (b) culpable and reckless fireraising;
- (c) culpable and reckless conduct; and
- (d) bestiality.

47. The offences at common law of–

- (a) perjury;
- (b) subornation of perjury;
- (c) attempting to pervert the course of justice;
- (d) attempting to defeat the ends of justice;
- (e) prevarication on oath;
- (f) contempt of court; and
- (g) prison breaking.

48. The offences at common law of–

- (a) breach of the peace; and
- (b) mobbing and rioting.