



The Licensing (Scotland) Act 2005 Objections and Representations

This leaflet is designed to help those persons who wish to object to or comment upon an application for a licence to sell alcohol. It is also a useful guide for applicants on what constitutes an objection or representation. This leaflet is a guide for cases where a licence has yet to be granted. Where a premises already has a licence then please see our separate leaflet on “Making a Complaint about Licensed Premises”.

Who Can Object?

When application is made for a premises licence under the Licensing (Scotland) Act 2005, then “**any person**” may, by notice to the Licensing Board—

- (a) object to the application on any ground relevant to one of the grounds for refusal.., or
- (b) make representations to the Board concerning the application, including, in particular, representations—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.”

The definition “any person” is clearly very wide and is not limited to those in the immediate vicinity or those that have business interests affected by the application.

However whilst there is no requirement to show a particular interest, the Moray Licensing Board can reject “frivolous or vexatious” objections or representations and can also recover the cost of dealing with frivolous or vexatious objections or representations from the person that made them. Interested persons should therefore be sure of the grounds before considering an objection or representation.

What are Objections and Representations?

There is a clear difference between objections and representations. Objections should mean an objection to the granting of a licence at all. On the other hand, representations can be virtually anything. They are not an objection to the granting of a licence in principle. Rather they are more likely to be suggestions for changes to the proposed operating plan or for conditions to be attached to the licence, to make the application more acceptable in the eyes of the representer.

Those intending to comment upon an application to the Moray Licensing Board should therefore be sure of whether they wish to object to any licence being issued or whether they wish to make representations about possible changes.

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Objections and Representations in General

The Moray Licensing Board is concerned with assessing the suitability of the premises for the sale of alcohol. Matters that interested parties wish to raise must be on relevant grounds and must also relate to the sale of alcohol.

Representations

Representations should be relevant to one of the licensing objectives if you wish to suggest amendments or conditions. Please see Objections below for details of the licensing objectives. It should be borne in mind that representations can support an application as well.

Objections

Objections can **only** be on grounds relevant to the grounds for refusal. Therefore if you wish to object to the grant of a licence at all then you must relate your objections to one or more grounds for refusal, which are:

- 1 that the subject premises are excluded from the scope of licensing as being premises on land used or acquired for the purpose of a special road or premises being used as a garage;
- 2 that the application must be refused because the applicant has had a premises licence refused in respect of the same premises within the last year;
- 3 that the application must be refused because application has been made for a 24 hour licence, which can only be allowed in the most exceptional circumstances;
- 4 that the application must be refused because hours for the sale of alcohol for consumption off the premises fall outside the times 10:00am to 10:00pm);
- 5 that the licensing Board consider the applicant is not a fit and proper person to be the holder of a premises licence;
- 6 that the granting of the application would be inconsistent with one or more of the licensing objectives. **The licensing objectives are:**

5.1	Preventing crime and disorder	5.4	Protecting and improving public health
5.2	Preventing public nuisance	5.5	Protecting children from harm
5.3	Securing public safety		

- 7 that, having regard to the nature of the activities proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises, the Board considers that the premises are unsuitable for use for the sale of alcohol;
- 8 that granting the licence would result in an overprovision i.e. such a concentration of licensed premises in the area, whether similar in nature or generally, that it is having a detrimental effect on the licensing objectives.

Police Objections

The police have the power to object or make a representation. The chief constable may also give the Licensing Board a report detailing incidences of antisocial behaviour or complaints or other representations made to the police about incidences of antisocial behaviour either on or in the vicinity of the premises.

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What is the Relationship with Other Regulatory Regimes?

As stated above matters raised must be on relevant grounds and must relate to the sale of alcohol. Inevitably there will be a cross over between the licensing objectives and matters relevant to other regulatory regimes e.g. noise, planning, smoking, unsafe premises, fire prevention etc. Matters under these headings all relate to the licensing objectives. However they are also covered by other legislation and other regulators.

Please note that the Scottish Government has made it clear that the licensing system must not duplicate other regulatory regimes. This means that the Moray Licensing Board will **not** allow licensing to be used simply as a means of putting additional pressure on an applicant where matters complained of should be dealt with by another regulator.

Where it is considered that objectors or representers are merely using the licensing system to their own ends rather than addressing the licensing objectives then matters raised may be rejected as vexatious.

This is an example relating to noise:

A theatre has been established in an area close to residential housing. Certain performances at the theatre are considered to be particularly noisy by neighbouring residents. The neighbours consider this to be a nuisance. They may, or may not have complained previously to the theatre owner. They may, or may not, have complained to the Council's Environmental Health Department.

The owner of the theatre then applies for a licence to establish a theatre bar and sell alcohol.

The neighbours notice that there happens to be an ongoing licence application and decide to make objections or representations relating to the licensing objective of preventing public nuisance. This is designed to place pressure on the theatre owner to reduce noise. It is an easy way of complaining.

In this scenario, where the noise constitutes a statutory nuisance then the appropriate enforcement agency would be the Moray Council's Environmental Department. The licensing system should not be used as a convenient means of placing pressure on the applicant. The Moray Licensing Board would be entitled to consider the premises suitable for the sale of alcohol and leave enforcement in respect of noise problems to Environmental Health. Equally it might become a licensing issue if other processes have been exhausted without result or if the noise can later be linked to the sale of alcohol (in which case there could be a later review).

How do I Object or Make a Representation?

Objections and representations must be made in writing and must be addressed to:
The Clerk to the Moray Licensing Board, Council Offices, High Street, Elgin, IV30 1BX.

Please note that objections and representations must be received on time by the Clerk. On time means within the time period for objections and representations as set out in both the premises licence advert and the premises notice of application. Proof of posting is not proof of delivery and late items will not be accepted.

What will Happen if I Object or Make a Representation?

Firstly the objection or representation will be screened to determine whether it complies with the legal requirements i.e. relevant grounds are disclosed and it is not frivolous or vexatious. Then if the objection or representation is accepted the Moray Licensing Board will ensure that a copy is delivered to the applicant for comment. It is not necessary for you to deliver a copy to the applicant.

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As objections go to the heart of the licence it will be necessary for all objections to be dealt with at a meeting of the Moray Licensing Board with the attendance of all parties. You will be called to a meeting in due course and you will be provided with details of the hearing procedures at that time. For further information regarding hearing procedures now you should view the Moray Licensing Board's statement of policy for the Licensing (Scotland) Act 2005 (available on the Moray Council's website at www.moray.gov.uk/licensing).

Where representations are concerned we will first review the applicant's response. It may be possible to agree amendments to the operating plan or conditions for the licence that would be acceptable to all parties. This may also be facilitated by mediation through the Licensing Standards Officer and the LSO might contact the parties to discuss the issues. In the absence of agreement between parties or sanction by the Board the matter will again be dealt with at a full hearing with all parties being required to attend.

Meetings of the Moray Licensing Board are called as and when business demands. A list of meeting dates will be published on the licensing pages of the Council's website. We may not be able to tell you precisely when a particular matter will be heard. All applications for a premises licence have a likely maximum processing time of 6 months. It may therefore be some time before we call you to a meeting.

How will the Board Decide?

In respect of objections the Moray Licensing Board must consider if any ground for refusal applies. If the Board finds that grounds for refusal exist then the licence must be refused. However if the Board finds that grounds for refusal do not exist then the Board must grant the licence.

Please note the mandatory nature of this process. The Board is not left with any discretion.

In respect of representations, the Moray Licensing Board must still consider whether any grounds for refusal exist as above. If not then the Board will go on to consider whether it would be appropriate to address matters by an amendment to the operating plan or placing a condition on the licence.

Personal Licences

Where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.

The appropriate chief constable must respond to the notice by giving the Licensing Board notice as to whether or not the applicant has relevant convictions.

Where convictions exist and the chief constable is of the opinion that, having regard to any conviction, it is necessary for the purposes of any of the licensing objectives that the personal licence application be refused then he may include a recommendation to that effect.

No-one else has the opportunity to object or make representations on an application for a personal licence.

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