

Late Hours Catering Licensing – Guidance

Orkney Islands Council

Civic Government (Scotland) Act 1982

These notes are for guidance only and are not an authoritative statement of the procedures and provisions relating to applications for licences and licences issued under the Civic Government (Scotland) Act 1982. Any person who requires further information should consult the Head of Legal Services, as undernoted, or a solicitor.

Licensing Requirement

1. In accordance with the Civic Government (Scotland) Act 1982 (the Act), a late hours catering licence, issued by Orkney Islands Council (the Council) as licensing authority, is required for the use of premises between 11pm and 5am for the sale to, or consumption by, the public of food whether on or off the premises.
2. A late hours catering licence is not required in respect of:
 - the use as such of licensed premises within the meaning of the Licensing (Scotland) Act 2005; or
 - premises being used in accordance with a public entertainment licence.
3. The Council may, on application, exempt the use of premises requiring a late hours catering licence from the requirement to have a licence:
 - in respect of any particular occasion; or
 - during a specified period not exceeding two months in any period of twelve months.Conditions may be attached to the exemption.

Hours of Operation

4. The Council normally grants late hours catering licences with the following maximum trading hours:
Sunday to Thursday: 23:00 to 00:00.
Friday/Saturday and Saturday/Sunday: 23:00 to 01:30.
Any application outwith the above maximum trading hours will be treated on its own merits and will require to be considered at a Meeting of the Council's Licensing Committee.

Conditions

5. The Council may attach reasonable conditions to licences as it sees fit, with each application being dealt with on its own merits. The licence holder will be required to comply with the standard conditions which will form part of the licence when granted. These will usually accompany this document, but can be obtained from the Head of Legal Services, as undernoted, and are published at <http://www.orkney.gov.uk/Service-Directory/L/Late-Hours-Catering.htm>.

Determination of and Duration of Licences

6. A licence will normally be issued after the elapse of 42 days from receipt of an application. In certain circumstances, for example where objections have been received, applications can take considerably longer to be determined. A licence shall remain in force, unless previously suspended or revoked, for a period of either one year from the date when it comes into force or three years, dependent upon the application submitted. The Council can also determine a shorter period in any case, dependent upon the circumstances. The licence is not transferable.

Licence to be Retained

7. The licence must not be altered, erased or defaced in any way, must be kept clean and legible and must not be lent to or used by any other person. Should the licence be lost or become defaced or illegible the licence holder shall obtain a replacement from the Council on payment of the appropriate fee. The licence holder shall produce his/her licence within 5 days of being requested to do so by an officer of Police Scotland, the Scottish Fire and Rescue Service or the Council.

Return of Licence

8. A licence holder shall deliver his/her licence to the Council:
 - upon ceasing to operate the activity of public entertainment;
 - within 7 days of receiving notice of the coming into effect of a decision of the Council to suspend or vary the terms of the licence, or the decision of a Court to revoke it.

Notification of Convictions or Material Change of Circumstances

9. The licence holder shall notify the Council of any conviction or material change within 14 days of the event. "Material change" means any change of circumstances affecting the licence holder (e.g. change of his/her name or address) or the activity to which the licence relates, including any particulars referred to in the application for grant or latest application for renewal of the licence. If in doubt, notify the Council of any changes.

Notification of Material Alterations

10. The licence holder shall not make or permit to be made any material change to the premises without the prior written consent of the Council unless in accordance with a requirement imposed by or in pursuance of any enactment other than Parts 1 or 2 of the 1982 Act. If in doubt as to whether consent is required, contact the Council.

Application Form and Fees

11. Application forms are available online at <http://www.orkney.gov.uk/Service-Directory/L/Late-Hours-Catering.htm> or from:
 - Head of Legal Services, Council Offices, School Place, Kirkwall KW15 1NY;
 - Email licensing@orkney.gov.uk;
 - Telephone 01856 873535 extensions 2229 or 2232.
12. Applications must be lodged with the Head of Legal Services, Corporate Services, Orkney Islands Council at the address above no later than 6 weeks before the first day of the commencement of the activity.
13. Applicants who would like Council staff to check their applications must arrange an appointment in advance to ensure that staff will be available when they would like to come in.
14. Application forms must be completed legibly in block capital letters in black ink or typed. All questions must be answered.
15. Completed application forms must be returned to the address below along with:
 - the appropriate fee – refer to current fees published on our website at http://www.orkney.gov.uk/Service-Directory/L/Licences_2.htm; and
 - a Duty of Care Notice (Controlled Waste Transfer Note) from your trade waste contractor detailing procedures for removal and disposal of trade waste from the premises.

Previous Convictions

16. Applicants must declare any convictions, subject to the terms of the Rehabilitation of Offenders Act 1974. This legislation is available at www.legislation.gov.uk. If applicants are in any doubt as to whether to declare convictions, they must obtain independent legal advice. If applicants wish to declare that they have no convictions, they must write “None” at the question on the form. They cannot leave the question blank. If applicants do not declare something which should have been declared, they may be prosecuted for failure to declare and this will affect the processing time and procedure for their application.

Incomplete Applications

17. Incomplete applications shall be returned to the applicant.

Site Notice

18. A Site Notice must be displayed at the premises for a continuous period of 21 days from the date of submission of the application. A Site Notice should not be displayed until the applicant has received confirmation from the Council that the application is satisfactory and can be processed. The Council will agree a date with the applicant for display of a Site Notice.
19. A Site Notice and a Compliance Notice may be obtained online at <http://www.orkney.gov.uk/Service-Directory/L/Late-Hours-Catering.htm> or from the address above and must be returned to that address after 21 days to certify that the display requirement has been complied with. If the Site Notice is not displayed or the Compliance Notice is not returned, the Council shall advertise notice of the application in the local press to allow representations and objections to be made. If this is required, any decision on the application shall be delayed and the cost of the advertisement must be paid by the applicant.
20. The Compliance Notice should be returned to the address below, at least 21 days after the date from which the Site Notice is first displayed in accordance with paragraph 28 above, but no later than 25 days from that date.

Processing the Application

21. Applications will be referred to Police Scotland, the Scottish Fire and Rescue Service and any relevant department of the Council for comment.
22. Applications must be considered within 3 months of being lodged and the Council must reach a decision within 9 months.
23. If an application is granted, a licence will be issued.
24. If, during the processing of an application, the Council receives any objection or representation, we will send a copy to the applicant. The application and the objection or representation will then be referred to a meeting of the Licensing Committee. The applicant will be invited to attend the meeting and given the opportunity to address the Committee.
25. If an application is refused, or granted conditionally, the applicant for a permanent licence is entitled to ask the Council within 21 days to give reasons for such refusal, or the imposition of such conditions, and thereafter is entitled to appeal to the Sheriff against the decision on various grounds. Applicants should seek the advice of a solicitor if matters should get to that stage.

Prior Refusal

26. If applicants have applied for and been refused a late hours catering licence, unless their circumstances have altered, their applications will be unlikely to be granted.
27. If refused, applicants cannot apply for the same kind of licence in respect of the same activity or for the same premises, within one year of that refusal unless there has been a material change in circumstances.

Offences

28. The following are criminal offences liable, on summary conviction, to a fine:
 - carrying on an activity for which a licence under the Civic Government (Scotland) Act 1982 is required without such a licence;
 - failing to comply with a condition of a licence;
 - making a false statement when filling in the application form;
 - failing to notify the Council of a material change in the circumstances of a licensee;
 - failing to obtain the consent of the Council before making any material change to the premises to which the licence relates;
 - failing to surrender the licence (1) after it has been suspended or varied or (2) when the licensee has given up the activity to which it relates.
29. The above list is not exhaustive and reference should be made to the 1982 Act for all offences under that Act.

Data Protection

30. The information provided on application forms will be used by the Council to enable decisions to be made on applications. The Council is required to collect the information in terms of legislation. Applicants' information will be shared with a number of agencies which the Council is obliged to consult before making decisions on applications.
31. The Council is obliged to make available some information submitted on application forms. The Council publishes electronic public registers in the Related Downloads section of the following Council webpage:
<http://www.orkney.gov.uk/Service-Directory/C/Civic-Government-Licences---Approved-Licence-Lists.htm>.
32. The Council has published a guide to your rights under Data Protection legislation and how you can exercise these. This information is available on the Council's website at <http://www.orkney.gov.uk/Council/D/Data-Protection-Policy.htm> or can be requested by contacting the Council directly.
33. Information about how the Council will process your personal information is available on the Council's website at <http://www.orkney.gov.uk/Online-Services/privacy.htm>.

Orkney Islands Council 2013.

Version: 2018-06-12.