

# **Licensing (Scotland) Act 2005**

## **Guidance for Completing a Disabled Access and Facilities Statement**

**March 2018**

## Introduction

1. The Scottish Government is committed to promoting and protecting equality and human rights for disabled people. Our aims are to remove the barriers that isolate and exclude the individual and to achieve full equality and human rights for disabled people in Scotland. One of the five ambitions contained in *Fairer Scotland for Disabled People*<sup>1</sup> is that places are accessible to everyone so that disabled people can participate in Scottish society as full and equal citizens.
2. The requirement for individuals to include a Disabled Access and Facilities Statement along with an application for an alcohol premises licence will help ensure that disabled people can access information about the accessibility of a venue before visiting it. It is hoped that the process of writing a Disabled Access and Facilities Statement will raise awareness amongst applicants of the accessibility of their premises and action they could take to improve this.

## Legislation

3. The Criminal Justice and Licensing (Scotland) Act 2010<sup>2</sup> (the "2010 Act") received Royal Assent on 6 August 2010. Section 179 of the 2010 Act amends section 20(2)(b) of the Licensing (Scotland) Act 2005<sup>3</sup> (the "2005 Act") to require applicants for a premises or provisional premises licence for the sale of alcohol for consumption either on or off the premises to provide a Disabled Access and Facilities Statement (the "statement"). Section 179 also sets out what the statement is to contain.
4. Failure to provide such a statement is not a ground for refusing an application. Rather it would mean that the premises licence application would be incomplete. The application could not therefore be considered by the Licensing Board as it would not be a valid application. A premises application which is accompanied by the statement would require to be determined by the Licensing Board in the normal way.
5. The provision does not compel the venue to provide any specific aids/access for disabled people. Nor does it interfere with the existing duty under equality law to make reasonable adjustments to ensure that a disabled person can use a service as close as it is reasonably possible to get the standard usually offered to non-disabled people. Applicants should however be aware that failure to comply with their existing duty may leave the premises open to a complaint under the Equality Act 2010<sup>4</sup>.
6. Section 20(2)(b) of the 2005 Act currently requires that an application for a premises licence be accompanied by an operating plan in the prescribed form, a layout plan, and the certificates required by section 50(1) of the 2005 Act (in

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<sup>1</sup> <http://www.gov.scot/Resource/0051/00510948.pdf>

<sup>2</sup> <http://www.legislation.gov.uk/asp/2010/13/contents>

<sup>3</sup> <http://www.legislation.gov.uk/asp/2005/16/contents>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2010/15/contents>

respect of a provisional premises licence section 45(10) of the 2005 Act provides that the certificate should be read as that required by section 50(2)).

7. The Premises Licence (Scotland) Regulations 2007<sup>5</sup> (the “2007 Regulations”) provide for the prescribed forms to be completed in respect of the premises licence/provisional premises licence application at Schedule 3. These regulations have been updated to include the prescribed form for the statement required under section 179. The statement must be submitted with, but does not form part of, the application for a premises licence.

### **Status of the disabled access and facilities statement**

8. The statement will require applicants for a new premises licence to consider the facilities they provide and to advise the local authority of these when they apply for a premises licence. A form to capture this information is included at the Schedule to the Premises Licence (Scotland) Amendment Regulations 2018 and Boards will include this within their own local application forms.
9. Applicants will not be required to submit a variation when these details change, nor will it be an offence if the originally submitted arrangements are not subsequently complied with.
10. The Scottish Government believes that requiring premises to pay for a costly variation every time these details change would actually deter premises from seeking to improve their facilities for disabled people which is not our intention.
11. For these reasons the statement is not detailed at regulation two of the 2007 Regulations, therefore it is not part of the premises licence that requires to be updated nor is it an offence not to comply with the exact terms of the details originally submitted.
12. We are considering whether to update the Licensing Register (Scotland) Regulations 2007<sup>6</sup>, so that the public can request and have access to the information originally provided at the time of application.

### **Background**

13. Section 179 of the 2010 Act originated from the ‘Barred’ campaign which sought to make accessibility information about licensed premises publicly available to make it easier for disabled people to find out about access and facilities of such premises. George Foulkes MSP lodged the provision as a Stage 3 amendment and it was supported by the Scottish Government.

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<sup>5</sup> <http://www.legislation.gov.uk/ssi/2007/452/contents/made>

<sup>6</sup> <http://www.legislation.gov.uk/ssi/2007/33/introduction/made>

## Guidance

14. This non- statutory guidance is primarily to assist applicants in completing the required statement. It may also be helpful to Licensing Boards in assessing the statement. The Police, Local Licensing Forums, Licensing Standards Officers, and the licensed trade and their representatives may also find it useful.
15. The guidance should be read in conjunction with the relevant legislation, and the relevant accompanying documents for the 2010 Act<sup>7</sup>. This guidance should not be seen as a replacement for independent legal advice.

## About the disabled access and facilities statement

16. The statement should contain clear information about how accessible the venue is for disabled people. It should also describe the facilities and/or any other provision made on (or in connection with) the premises for disabled people.
17. The purpose of the statement is to ensure that disabled people can access information about the accessibility of a venue before visiting it. It is good business practice to ensure that premises are accessible and welcoming to all customers.
18. The process of writing a statement should also raise awareness amongst applicants of the accessibility of their premises and action they could take to improve access to their premises.

## Consideration of the disabled access and facilities statement

19. The legislation does not require the premises to provide any specific aids/access for disabled people and local Licensing Boards will have to bear in mind that some premises may have no such access or facilities and that this does not mean that a licence should not be granted. However, local Licensing Boards are likely to wish to be satisfied that applicants have given consideration to what access and facilities they have for disabled people and have described them fully in their statement rather than merely listing them. Some practical examples of disabled access and facilities are:
  - Disabled access and egress: e.g. ramped access, electronic doors
  - Access within the premises: e.g. level floor, stairs, lifts.
  - Facilities: e.g. accessible toilets, hearing loop, seating areas, low level bar area.
  - Other provisions: e.g. large print menus/price lists, table service, water for assistance dogs.
20. In completing their statement, it is important for applicants to demonstrate that they have given full and proper consideration to the accessibility of their premises.

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<sup>7</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/16193.aspx>

21. The following are examples of the level of detail which we consider appropriate to provide in the statement:

- Disabled access to the premises is from the car park at the rear of the building. There is a ramped access suitable for wheelchair users, the elderly or infirm. The premises have accessible doors XX wide which can accommodate wheelchair users and signage indicating disabled access routes.
- There is one disabled toilet located on the ground floor. Tables accessible to a wheelchair user are available on both the ground and upper floors with the upper floor being accessible via a lift accessible to wheelchair users
- Menus are available in large print. Table service can be provided for disabled customers. Television programmes have subtitles. Assistance dogs are welcome.

22. It is particularly important to consider that not all disabilities are obvious and that disability extends beyond people with mobility difficulties and wheelchair users. Disabilities include:

- People with mental health problems and/or psychological difficulties
- People who are blind or partially sighted
- People with learning difficulties/disabilities
- People who are deaf or hard of hearing
- People who use British Sign Language
- People with long term illnesses
- People with an acquired brain injury

23. Applicants may find the HMO Government Office for Disability Issues Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability<sup>8</sup> helpful.

24. It is important for applicants to have an understanding of the full range of barriers that disabled people experience in order to understand how accessible their premises are. It may therefore be advisable that those who do not have a basic understanding of disability equality undertake disability equality training and/or have their premises access audited. It is best practice for training and access audits to be carried out by disabled people.

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<sup>8</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

## Publication of the disabled access and facilities statement

25. Section 179 of the 2010 Act does not require either the applicant for a premises licence or the Licensing Board to publish the statement. However, we consider it best practice for this information to be available to potential customers who have a disability in order that they can make a judgment on whether the premises are accessible to them. Applicants may therefore wish to consider publishing their statement on the website (if it has one) of the relevant premises. We will consider whether to amend the Licensing Register (Scotland) regulations 2007 to require the statement to be contained in the public register.

## Other sources of information

26. Further information is available from website sources such as Disability Equality Forum<sup>9</sup> (formerly Scottish Disability and Equality Forum), Convention on the Rights of Persons with Disabilities<sup>10</sup>; Independent Living in Scotland<sup>11</sup>; Capability Scotland<sup>12</sup>, Glasgow Disability Alliance<sup>13</sup> and Equality and Human Rights<sup>14</sup>.

27. The Access Panel Network Scotland website<sup>15</sup> contains a directory of Local Access Panels<sup>16</sup>. Local Access Panels may be able to provide advice and can also carry out Access Audits and advise on adaptations to make premises more accessible.

28. Euan's Guide<sup>17</sup> is a disabled access review website. Venue representatives can register with Euan's Guide and provide details about how accessible their premises are to the public. The public can also share their reviews and experiences of premises on the website.

29. In 2012 The British Beer and Pub Association published accessibility guidance in outlining best practice for pubs – ‘An *open welcome Why being accessible is good for your pub*’. This was updated in 2016 - ‘*Pubs are for everyone – 'Why being accessible is important*’<sup>18</sup>.

30. Visit Scotland also provides information in relation to Accessibility Guides<sup>19</sup>.

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<sup>9</sup> [www.disabilityequality.scot](http://www.disabilityequality.scot)

<sup>10</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>11</sup> <http://www.ilis.co.uk/home>

<sup>12</sup> <http://www.capability-scotland.org.uk/>

<sup>13</sup> [www.gda.scot](http://www.gda.scot)

<sup>14</sup> <http://www.equalityhumanrights.com/scotland/>

<sup>15</sup> <http://accesspanelnetwork.org.uk/>

<sup>16</sup> <http://accesspanelnetwork.org.uk/directory-panels/>

<sup>17</sup> <https://www.euansguide.com/>

<sup>18</sup> <http://s3.amazonaws.com/bbpa-prod/attachments/documents/uploads/24453/original/BBPA%20Access%20Report%202016%20final.compressed.pdf?1485793591>

<sup>19</sup> <https://www.accessibilityguides.org/>

## Commencement

31. The outstanding provisions at section 179 of the 2010 Act are effective from 30 March 2018. The provisions were commenced by the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No.14 and Saving Provision) Order 2017<sup>20</sup>.
32. The transitional and consequential amendments to existing legislation as a result of the provisions at section 179 of the 2010 Act are detailed below.

### Transitional provisions

33. The transitional and savings provisions contained in the commencement order provide that section 179 of the 2010 Act does not apply to applications made prior to the commencement date. This means that alcohol premises which are either already licensed or have a completed application submitted or under consideration prior to section 179 coming into force are not required to provide a statement.

### Consequential Amendments

34. As a result of implementing section 179 of the 2010 Act, the 2007 Regulations which provide for the premises licence application form required to be updated, to include a prescribed statement form. The revised regulations<sup>21</sup> come into effect at the same time as the provisions in section 179, on 30 March 2018.

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<sup>20</sup> <http://www.legislation.gov.uk/ssi/2017/445/contents/made>

<sup>21</sup> <http://www.legislation.gov.uk/ssi/2018/49/contents/made>



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