

Aberdeenshire Council
Civic Government (Scotland) act 1982
Section 38 and Schedule 1
Boat Hire Licences
Notes of Guidance for Applicants

1. A Boat Hire Licence is required by the owner(s) of one or more vessels or class or classes of vessels where such vessel(s) being any kind of watercraft (including hovercraft) are used in the course of a trade or business either for hire or for carrying 12 passengers or less for pleasure, recreational or sporting purposes in inland or tidal waters. Such vessel(s) can range from single seat canoes to large vessels (motor or otherwise) and the purposes are all such as may involve inexperienced members of the public being either passengers or in charge of a vessel. Examples would be day trips, "trips around the bay" or coastal fishing hires.
2. A Licence is **NOT** required for any vessel which carries more than 12 passengers, operates more than 3 miles from the shore or which carries 12 passengers or less more than 15 miles from its point of departure. All of these types of vessel are regulated instead by the Department of Transport. In addition, a Licence is not required if a vessel is intended to be used for continuous periods of 24 hours and it has overnight sleeping accommodation. (This will exempt most yacht chartering businesses). Vessels used exclusively for fishing in non-tidal waters do not require a Licence. Vessels used in any harbour owned or managed by any other Council as Harbour Authority may require that Council's consent but they do not require a Boat Hire Licence from this Council.
3. Application forms for Boat Hire Licences are available from the Head of Service (Legal and Governance), Aberdeenshire Council, St. Leonard's, Sandyhill Road, Banff, AB45 1BH.
4. An application for a Boat Hire Licence must contain the name(s) and type(s) of vessel(s), the material of which the hull(s) is/are made (i.e. Glass, reinforced plastic, steel or wood) and the make, model, HP and RPM of the engine(s) as well as the full name, address and date of birth of the Applicant and the name and address of any Legal Agent. If a person other than the Applicant is to be carrying on the day-to-day management then the name, address and date of birth of that person must be provided. If an application is made by or on behalf of a Company, Partnership, Public Body, Voluntary Organisation or other body then the addresses of the Registered or Principal Office will be required as well as the names and private addresses of the Directors, Partners, Committee Members or other persons responsible for management. The Council reserves the right to require such further information as it may deem necessary to enable it to deal with the application.
5. An application for the grant or renewal of a Boat Hire Licence must also be accompanied by a Certificate of Fitness in respect of each vessel to which the application relates. The acceptability of a Certificate will be at the Council's discretion but normally it will accept a Certificate from a qualified marine surveyor, naval architect, recognised boat builder or suitably experienced seaman. Obviously, for larger and older vessels, more evidence of the specific qualifications of the person issuing the Certificate will be required and the Council reserves the right to require additional information. The Certificate must state that the vessel is suitably designed, constructed, maintained and equipped and that it is in a safe condition for the purpose for which and the place or waters in which it is to be used. It must also confirm the type of material of which the hull of the vessel is made as well as the make, model, HP and RPM of the engine of each vessel. In addition, a "Yellow Code" Certificate

issued in terms of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 (SI 1998 No. 2771) must accompany the application form.

6. On the date of lodging of the duly completed and signed application and for a period of 28 days thereafter, the applicant must display at or near the premises sufficiently convenient to be read by the public a Notice stating that an application has been made and containing the same particulars specified in Paragraph 4 above. The Notice must also narrate the terms of Paragraph 7 below. On expiry of the 28-day period the applicant must lodge a Certificate of Compliance together with a copy of the Notice with the Council. The application cannot be considered by the Council without this Certificate but if the Notice is removed, obscured or defaced during this 28 days period, and the applicant can show to the satisfaction of the Council, that all reasonable steps have been taken to protect or replace the Notice, then the Council may accept a Certificate to this effect. The Council may require applicants to display the Notice again for a further period of 28 days before making a final decision on the application.
7. On receipt of the application the Council will obtain and consider any objections and/or observations which the Chief Constable, Firemaster and Coastguard may have. The Council will also consider any objections and/or observations from its own Head of Environmental Health, Head of Planning Services (Building Control) and Head of Recreation Services. All other proper objections and representations lodged timeously and in accordance with paragraph 8 below will also be considered. The Council reserves the right to make such other enquiries as it deems necessary to enable it to consider the Application. The Council will only grant the application if it is satisfied that none of the grounds of refusal contained in Paragraph 9 below apply.
8. Objections and representations must be made in writing and signed by or on behalf of the person responsible. The grounds of the objection(s) or the nature of the representation(s) must be specified and be made within 28 days of the date of the application being lodged with the Council. The Council will send a copy of any objection or representation to the applicant or his agent.
9. The Council will refuse an application to grant or renew a licence if:-
 - (i) The applicant, or in the case of a Company, Partnership, Public Body, Voluntary Organisation or other body, any Director, Partner, Committee Member or other person responsible for management is either disqualified by a Court under section 7(6) of the Act or in their opinion is not a fit and proper person to hold a licence; or
 - (ii) In their opinion the activity or activities would be managed or carried on for the benefit of a person other than the applicant who would be refused the grant or renewal of a Licence if the application was made by him; or
 - (iii) In their opinion the vessel(s) is/are not suitable or convenient for the activity or activities having regard to:-
 - (a) The character and condition of the vessel(s);
 - (b) The nature and extent of the proposed activity or activities;
 - (c) The kind of person likely to be in the vessel(s);
 - (d) The possibility of undue public nuisance; or
 - (e) Public order or safety; or

(iv) In their opinion there is other good reason for refusal.

10. If a Boat Hire Licence is granted or renewed it shall come into force either immediately or on such later date as the Council may specify. The Licence will have effect for a maximum period of three years or for such shorter period as the Council may specify.
11. If a Boat Hire Licence is granted or renewed the Council will attach conditions. These will fix the maximum number of passengers which may be carried and restrict the use of the vessel(s) not only within specified inland waters but also within tidal waters regarded as falling within the area or jurisdiction of the Council. For example, a particular vessel may not be permitted to travel beyond the 3 mile limit from shore and it may also be confined to an area designated by reference to longitudinal lines or lines drawn from headland to headland. Such limits would normally be specified in the light of guidance from the Coastguard.
12. The Licence-holder must effect and maintain in force for every vessel to which a Licence relates a Third Party Liability Insurance Policy with a reputable Insurance Company for an amount of cover acceptable to the Council. Evidence of adequate insurance cover must be submitted with the application form.
13. The Licence-holder must ensure that every boat or vessel at all times when it is hired or plying for hire is in charge of an experienced boatman who holds an RYA/DOT Certificate of Competency as a Coastal Skipper or a Boatmaster's Licence issued by the Department of Transport, A Medical Fitness Certificate and an approved Basic Sea Survival Course Certificate as well as having a thorough knowledge of the weather and tidal conditions of the whole of the appropriate operational area. Evidence of the appropriate certificates must be produced with the application form. A Licence will not be issued unless the applicant is the holder of such certificates.
14. Where the Council have refused an application for the grant or renewal of a Licence they will not within 1 year of the date of their refusal entertain a subsequent application from the same applicant for a Licence in respect of the same vessel(s) unless in their opinion there has been a material change in circumstances since their refusal.
15. If the Council refuses to grant or renew a Boat Hire Licence then within 14 days the applicant can request the Council to give reasons in writing for its decision. Even where a Licence is granted any person who objected or made representations, including the Chief Constable or Coastguard can make a request for written reasons within the same period of time. Once a request is received the Council has 14 days to issue its reasons and having done so there is a right of appeal to the Sheriff on the grounds that in arriving at their decision the Council either erred in law, based its decision on incorrect material fact, acted contrary to the laws of natural justice or exercised its discretion in an unreasonable manner. If the appeal is upheld the decision can either be reversed, modified or remitted back to the Council for reconsideration. There is a further right of appeal on a point of law to the Court of Session.
16. The above notes are intended only as guidance for applicants. They are not intended to be an authoritative statement of the law. No warranty as regards accuracy is given or should be implied.