
THE MORAY LICENSING BOARD

THURSDAY 3 AUGUST 2017

NOTICE IS HEREBY GIVEN that the Meeting of **THE MORAY LICENSING BOARD** is to be held within the The Moray Council, Council Chambers, High Street, Elgin on Thursday 5 October 2017 at 10.00am.

Alasdair McEachan
CLERK

28 September 2017

BUSINESS

1. Prior Minutes
 - (i) Minutes of the Meeting held on 3 August 2017
 - (ii) Minutes of the Special Meeting held on 3 October 2017 – to be tabled

The Licencing (Scotland) Act 2005

2. Applications Section – Appendix 1
3. Proposals for the Processing of Occasional Licence Applications
4. Chief Constable's Report under Section 12A

CLERK:	Alasdair McEachan
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THE MORAY LICENSING BOARD**SEDERUNT****COUNCILLOR J ALLAN****COUNCILLOR D BREMNER****COUNCILLOR G COWIE****COUNCILLOR P COY****COUNCILLOR J DIVERS****COUNCILLOR R EDWARDS****COUNCILLOR L LAING****COUNCILLOR M MCLEAN****COUNCILLOR R SHEPHERD****CLERK TO THE BOARD: Mr A McEachan**

THE MORAY LICENSING BOARD

MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD

The Moray Council Chambers, Council Headquarters, High Street, Elgin on Thursday 3rd August 2017

PRESENT

Councillors: J Allan
D Bremner
G Cowie
J Divers
R Edwards
L Laing
R Shepherd

APOLOGIES

Apologies were intimated on behalf of Councillors F Brown and P Coy

IN ATTENDANCE

Margaret Forrest, Depute Clerk to the Licensing Board
Ally Milne, Accountant

1. APPOINTMENT OF CONVENER AND (IF THE BOARD CHOOSES) VICE CONVENER

The Depute Clerk asked for nominations for appointment of Convener. Cllr Divers nominated Cllr Cowie. This was seconded by Cllr Shepherd. Cllr Bremner nominated Cllr Divers who declined the nomination. There being no further nominations Cllr Cowie was appointed as Convener and took the chair.

The Convener sought nominations for Vice Convener. Cllr Edwards nominated Cllr Allan. There was no seconder. Cllr Bremner nominated Cllr Laing. There was no seconder. Cllr Shepherd nominated Cllr Divers. This was seconded by Cllr Cowie. There being no further nominations Cllr Divers was appointed as Vice Convener.

2. PRIOR MINUTES

- I. The Minutes of the Meeting held on 23 March 2017 were submitted and approved by those members of the Board who had been present.
- II. The Minutes of the Special Meeting held on 31 July 2017 were submitted and approved.

3. APPLICATIONS

(i) New Premises Licence - Speyside Craft Brewery Ltd, Forres

The Applicant was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out on 31 July 2017. There had been a representation, which had been withdrawn following the Applicant updating the Operating Plan. The Depute Clerk detailed the changes to the Operating Plan and the Applicant was invited to address the Board. The Applicant advised that due to the expansion of the business they would no longer have capacity to run Festivals on the site and outlined what he would be looking to do were the licence to be granted. There were no questions from the Board. The Applicant confirmed he was happy with the way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application.

(ii) **New Provisional Licence – El-Gin, Elgin**

The Applicant was not present. The Depute Clerk advised that the Applicant had asked for the application to be deferred until the next Board meeting on 5 October 2017 given a change in personnel at the business. The Board agreed to application being deferred until 5th October 2017.

(iii) **New Premises Licence – Whisky Advisors Ltd, Dufftown**

The Applicant and Objector were present. The Depute Clerk introduced the application and advised that all the paperwork was in order and that a site visit had been carried out on 31 July 2017. The Objector was asked to address the Board and answered the Board's questions. The Applicant was asked to address the Board and answered the Board's questions. The Applicant and Objector were asked to sum up and confirmed they were happy with way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application. The Objector was advised of the right to request a Statement of Reasons and Appeal to the Sheriff and advised to take independent legal advice.

(iv) **Major Variation – Cragganmore Distillery, Ballindalloch**

The Applicant's representative was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out on 31 July 2017. There were no objections or representations. The Applicant's representative was invited to address the Board. After answering questions from the Board and being invited to sum up the Applicant's representative confirmed that she was happy with the way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application.

(v) **Major Variation – Mansefield Hotel, Elgin**

The Applicant's representative was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out on 31 July 2017. There were no objections or representations. The Applicant's representative was invited to address the Board. There were no questions from the Board. The Applicant's representative confirmed that he was happy with the way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application.

(vi) **Major Variation – Captain’s Table, Findhorn**

The Applicant was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out on 31 July 2017. There were no objections or representations. The Applicant was invited to address the Board. There were no questions from the Board. The Applicant confirmed that she was happy with the way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application.

(vii) **Major Variation – Keith Brewery Ltd, Keith**

The Applicant’s representative was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and a site visit had been carried out on 1 August 2017. There were no objections or representations. The Applicant’s representative was invited to address the Board. There were no questions from the Board. The Applicant’s representative confirmed that he was happy with the way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application.

(viii) **Major Variation – Premier Convenience Store, Keith**

The Applicant was present. The Depute Clerk introduced the application and advised that the paperwork was in order and that a site visit had not been carried out as this was a change in hours only. There were no objections or representations to date and the Depute Clerk advised that the period had not yet expired and advised the Board that they could, if so minded, grant the application in principle and delegate authority to the Clerk to grant and issue the licence when the period expired subject to there being no objection or representation received. If any were received then the matter would be referred to the next Board meeting. The Applicant was invited to address the Board. After answering questions from the Board and being invited to sum up the Applicant’s representative confirmed that she was happy with the way the hearing was handled. After hearing from the Depute Clerk on legal points the Board decided to grant the application in principle and granted authority to the Depute Clerk to grant and issue the licence when the period expired subject to there being no objection or representation.

4. SITE VISIT PROCEDURE

The Depute Clerk introduced the report and read out suggested amendments to Appendix 1 in respect of typing errors and invited the Board to consider and adopt Appendix 1 with or without further amendments. The Board considered and agreed the process for site visits attached at Appendix 1 with the amendments read out by the Depute Clerk,

5. ANNUAL REVIEW OF INCOME AND EXPENDITURE AND BUSINESS TRANSACTED

The Depute Clerk introduced the report. The Board agreed to: Note the current fees attached at Appendix 1; note the Financial Report on Income and Expenditure data attached at Appendix ; Publish the Financial Report; keep the current fee structure; and note the business transacted for the calendar year 2016 attached at Appendix 3.

MORAY LICENSING BOARD

MEETING, 5 October 2017 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
New Premises Licence	Bor Bar Ltd 17 Marleon Place Elgin IV30 4GG	Wendy Lipkovics	25 August 2017	New premises licence application Site visit carried out Paperwork in order Neighbour objections
New Provisional Licence	El-Gin Findrassie House Elgin Moray IV30 5PS	El-Gin Findrassie Ltd	20 January 2017	New provisional licence application Site visit carried out Paperwork in order No objections or representations
New Premises Licence	Portgordon Bowling Club Station Road Portgordon AB56 5RZ	Portgordon Bowling Club	31 August 2017	New premises licence application Site visit carried out Paperwork in order No objections or representations
Major Variation	Tennant Arms 15 St Andrews Road Lhanbryde IV30 8NZ	Tahir Perviaz	19 July 2017	Major variation application to remove on sales, increase off sale hours to 10am to 10pm daily, add and remove activities Site visit carried out Paperwork in order Public objections

MORAY LICENSING BOARD

MEETING, 5 October 2017 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Major Variation	Kiss 9 Cluny Square Buckie AB56 1AH	Morven Holdings Limited	1 September 2017	Major variation application to increase on sale hours for Kiss and Moderation Lounge Bar. Add access for children and young people for private functions held in Kiss. Site visit carried out Paperwork in order No objections or representations
Major Variation	Mason Arms (to be known as Stuart Arms) 22 Conval Street Dufftown AB55 4AE	Anne Stuart	25 August 2017	Major variation application to increase hours for access for children and young people. Site visit carried out Paperwork in order No objections or representations

Key to Colour Coding of Applications within Appendices to the Agenda of Business for the Moray Licensing Board

All matters are to be heard by the Moray Licensing Board and the Moray Licensing Board has the final decision. However, in accordance with Government Guidance and locally agreed procedure, applications may be submitted to the Board with a general recommendation.

Please note that colour coding may be subject to change given the nature of the licensing procedure. Documents may be received and/or negotiations resolved following publication of the agenda.

RED

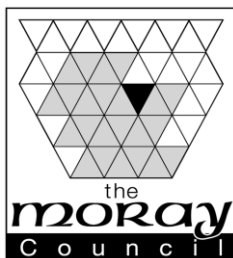
Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. This should apply to all new premises/provisional licence applications. There may be ongoing negotiations to resolve problems.

YELLOW

Indicates changing circumstances with the application. It is not ready to be granted at the time of publication but there are not normally major problems e.g. procedural issues or ongoing negotiations. Applications will normally be submitted with recommendation for grant or deferral.

GREEN

Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members are free to make enquiries as they see fit.



REPORT TO: THE MORAY LICENSING BOARD ON 30TH JULY 2009

SUBJECT: LICENSING (SCOTLAND) ACT 2005 - PROPOSALS FOR THE PROCESSING OF OCCASIONAL LICENCE APPLICATIONS

BY: CLERK TO THE BOARD

1. Reason for Report

- 1.1 The reason for this report is to advise the Board of requirements under the Licensing (Scotland) Act 2005 for Occasional Licence Applications as well as Extended Hours Applications & General Extension of Hours and to seek the Board's approval of procedures locally for the future processing of the same.

2. Recommendations

It is recommended that the Board:-

- 2.1 **Note the requirements and proposals for Occasional Licence applications.**
- 2.2 **Consider and agree any matters of policy under paras 3.24 to 3.29 and/or such other matters that appear to the Board to be appropriate.**
- 2.3 **Note the position on extended hours and general extension of hours.**

3. Background - Occasional Licence Applications

- 3.1 The Licensing (Scotland) Act 2005 ("the Act") provides for a scheme of occasional licences. Occasional licences are the means by which events that are held outwith a licensed premises can be authorised to sell alcohol. An occasional licence can have effect for up to 14 days at a time and can be applied for by three categories of people:
- The holder of a premises licence
 - The holder of a personal licence
 - A representative of any voluntary organisation or a qualifying club.
- 3.2 If application is made by a voluntary organisation or qualifying club the Board may issue, in any period of 12 months –
- Not more than 4 occasional licences each having effect for a period of 4 days or more, and
 - Not more than 12 occasional licences, each having effect for a period of less than 4 days,

Provided that, in any period of 12 months, the total number of days does not exceed 56.

- 3.3 The Licensing (Fees) (Scotland) Regulations 2007 prescribe the fee for an occasional licence as £10 so the fee can only be altered by the Scottish Government. The fee does not cover the cost of processing an occasional licence. Best estimates are the cost of processing is approx £100 but more if the event is large and complex. The Scottish Government has been lobbied by licensing clerks nationwide about this shortfall and has been aware of the need to increase the fee for some years. The need is recognised but, unfortunately, there is no timescale for the change in the law.

Procedure and Consultation

- 3.4 The Occasional Licences (Scotland) Regulations 2007 prescribe the format of the application form and the licence that are to be used by Boards. Therefore the forms cannot be changed and any additional information that may be required over and above the questions on the form may only be requested, not required, before processing.
- 3.5 The form is limited in nature. In particular there is no provision for the applicant to demonstrate or exhibit policies that have been put in place to ensure the safe running of the event. For example, there is no provision for information about buildings, temporary structures, health & safety, maintaining order and dealing with drugs at events. There is nothing to require applicants to demonstrate how they will meet the licensing objectives.
- 3.6 This was a clear policy decision by the Scottish government because most events are small and limited in time, for example a wedding in a marquee. As stated a maximum of 14 days is allowed. There are some larger events but it is now common for larger events to have an event plan as the council, through its large events group, encourages the good planning of large events. The group is run by the Council's Community Safety Officer. It decides whether to allocate a safety advisory group (SAG) to a particular event. SAGs are co-ordinated by a local authority and made up of various authority services, emergency services and other relevant bodies to assist the event organiser.
- 3.7 Due to the limited nature of the form applicants are asked to supply additional information about the event on application. Applicants are provided with a good deal of advice on the additional information required in guidance that accompanies the forms and is on the website. That information is supposed to make it easier for partners to assess the application and provide meaningful feedback / suggestions on how the applicant intends to promote the licensing objectives in Moray. The licensing objectives are statutory and Boards have a duty to promote the objectives. They are preventing crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health and protecting children and young persons from harm. Unfortunately, as this information is not required by statute, it is often not supplied and involves additional administration in chasing and checking the same so that partners can meaningfully respond.

- 3.8 The council's licensing service (via the Legal and Democratic Services Admin Team) currently issues occasional licence consultations to:
- Police Scotland
 - Licensing Standards Officers (LSO)
 - The public through the public access system that anyone can access on the internet
- These are the statutory requirements. The police and LSO have up to 21 days to respond. The public has up to 7 days to respond.
- 3.9 Any person can lodge an objection or a representation.
- 3.10 The licensing service also notify, as a matter of courtesy, the Scottish Fire & Rescue Service and the council's own environmental health (EH), planning and building standards services. The safety and regulation of events taking place are often of interest to these services and licensing is often the first or only service to hear about events. EH will be interested in many matters such as food stalls and wash facilities. Planning identify and pursue matters of planning enforcement. Building standards look at the safety of structures, lighting, public announcement and emergency exits. Unfortunately the missing information referred to at paras 3.5 to 3.7 above is key to other stakeholders so there is often a lot of to-ing and fro-ing with applicants to seek additional information before a licence can be granted. As these consultees are not statutory they have 7 days to respond, along with the rest of the public.
- 3.11 Due to the consultation requirements, it is recommended that all licence applications be lodged at least 28 days in advance of the intended event, to ensure the licence is processed in time.

Scheme of Delegation

- 3.12 The Board has a scheme of delegation, a copy of which is attached as Appendix 1.
- 3.13 Where no objections or representations are received whether from the public (including voluntary consultees), the Police or the LSO, then, according to the Act, the Board must grant the application. This is done in terms of the existing Scheme of Delegation by officers. There are no Board Member involvement in these non-controversial cases.
- 3.14 Where an application does attract an objection or representation, officers bring these to the attention of the applicant. This can often lead to a period of negotiation and if matters can be agreed or resolved, the objection etc. may be withdrawn and the licence is again granted under delegated powers. The most common scenario is where the police make a representation and suggest conditions to attach to the licence. The applicant will generally agree the conditions and the licence can be issued with those conditions attached.
- 3.15 Where matters cannot be resolved, the Act says the Board may hold a hearing and if that is the case, has 42 days to hold a hearing. Clearly, the timescale for events makes a hearing impractical and so, again, the scheme of delegation provides for the convenor and vice convenor to form a view and make a decision on the matter. That is done by email and the clerk is notified and where, appropriate, issues the licence.

Short Notice Applications

- 3.16 The Criminal Justice and Licensing (Scotland) Act 2010 later introduced a statutory measure for dealing with occasional licence applications at short notice. It provided that where the Board is satisfied that an application should be dealt with quickly i.e. at less notice than the periods in para 3.8 above then the Board can reduce the consultation period to not less than 24 hours as the Board may determine.
- 3.17 The types of events covered by occasional licence vary tremendously and each case has been judged on its own merits. To date it has not proven possible or practical to define a list of all types of application where it might be suitable to be dealt with at short notice. In practical terms there have always been events other than funerals where it seemed suitable to accept an application at short notice. For example a scenario where the applicant is not at fault e.g. where a venue becomes unusable as a result of a natural disaster and a new venue must be found at short notice. In that case an occasional licence cannot be transferred and a fresh application must be made. For example where the customer is not at fault and the applicant simply did not apply in good time before a wedding event.
- 3.18 As a result, the scheme of delegation was amended to allow for short notice applications. It currently allows the Clerk to accept an occasional licence application for a funeral/wake at short notice without further reference to the Board. In other cases the convenor can currently determine, on behalf of the Board, whether an application is suitable to be dealt with at short notice. There are no specific statistics but, to date, very few such applications have been refused.

Cost and Numbers

- 3.19 The licensing service consistently processes between 400 and 500 occasional licence applications per annum. This takes up a significant proportion of licensing time and resources. In fact it is a disproportionate amount of time when it is compared to the statutory fee of £10. It is estimated that, having regard to the time and cost of processing council wide, the council is losing £70 or more per application. Over 500 applications that is approx £35000.00. As the licensing system is self funding overall, the cost to the council (staff and overheads) of occasional licences is being absorbed within the cost to premises licence holders.
- 3.20 The licensing service has streamlined significantly, resulting in reduced operating costs. As a result of these greatly reduced costs (approx 40% over the last 5 years) it has been necessary to lower the annual fees for premises licence holders in order to ensure the licensing service does not make a profit. However with reduced resources, a demanding licensing workload and other additional duties, it is proving almost impossible for the Legal and Democratic Services Admin Team to keep up with the pace of work.
- 3.21 Increasing resources will increase the cost and so fees in general. In that way premises licence holders will be bearing even more of the brunt of the cost of funding the faster processing of occasional licences. It is often premises licence

holders applying for occasional licences (no actual breakdown of numbers is recorded or available) so there will be some benefit to them but, where it is not, premises licence holders are effectively funding their competitors.

- 3.22 In practical terms the deadline for issuing a licence is set by the date of the event. The licensing service is having to issue licences closer and closer to the actual dates of events and this can cause disruption to event planning. In addition customers have become used to applying at relatively short notice and still receiving their licence. There has been no drive / motivation to abide by the 28 day recommendation as applications with shorter notice have been allowed to jump the queue and thus delay the issue of licences to those who do plan and apply in sufficient time.
- 3.23 The occasional licence fee cannot be increased as it is a statutory fee. In view of the disproportionate amount of time and resources being taken by occasional licences and the lack of government progress towards an increase in the fee, the only other options to redress the balance are to reduce the processing time and/or to reduce the number of late applications by strictly maintaining the 28 day requirement.

Possible Measures to Redress the Balance

Processing Time

- 3.24 The only way to reduce processing time would be to cut the number of consultations issued and so the follow up and processing those entail. The only way to do that is to cut out consultations that are issued as a matter of courtesy rather than statute (referred to in para 3.10 above). This would mean those local authority services and other organisations would, along with the rest of the public, have to just monitor the Board's public advert website for details of events. If necessary they would then have to request further details and follow up with the applicant. They would then have to make comments into the licensing process if they deemed it appropriate to do so. This is a matter of policy and risk management for the Board to decide. Reducing the consultations would really be on the strict basis that it is up to the applicant/organiser to ensure a safe event. The licence is purely for the sale of alcohol and in this way licensing is not being used to duplicate other regulatory regimes. The risk element has always been that licensing will not be informing other regulatory regimes. In addition the public perception will be that if the Board issues a licence for an event then it is seen to be a safe and suitable event. There is also a risk that the Board is not seen to be doing as much to promote the licensing objective of securing public safety.

Application Time Limits

- 3.25 By insisting on the 28 day time limit for applications the licensing team would cut the number of applications by a small amount but, more importantly, have more time to plan and process applications in good order and in good time. This would be another policy matter for the Board to agree. The licensing service (via the Customer Services mailroom team) would refuse to accept applications at less than 28 days' notice and the application would be returned unprocessed. This has already been tried on an interim test basis pending this report, with the support of the convenor who currently has authority in terms of

the scheme of delegation for short notice applications and with the support of the vice convenor. However if this is to continue on a permanent basis it was felt that full Board approval would be required.

Short Notice Applications

3.26 As stated in paras 3.16 – 3.18 above there is a statutory short notice process for situations when the Board is satisfied that it should be considered at short notice. The current process is to accept applications connected to funerals at short notice and prior to the interim measures mentioned above at para 3.25, to refer other events to the convenor to determine if the Board is satisfied. By accepting a late notice application, the customer will have a legitimate expectation that it will be processed in time.

3.27 To be consistent with the 28 day time limit and yet retain the statutory short notice procedure the alternatives for short notice applications would be to:

3.27.1 Change the delegation to be strict in terms of 28 days for all events except funerals. No other short notice applications will be accepted. This has the advantage of being certain and more easily managed but less flexible in terms of unexpected events. As far as the clerk is aware, a strict 28 days approach has not been legally tested in Scotland by a challenge through the courts. There is a risk of challenge on the basis that the Board's legal duty is to process valid applications. If a valid application is accepted but cannot be processed in time for the event then such an approach should be beyond challenge. The test is whether a valid application can be refused without being processed. As stated above, a test period has been carried out prior to this report and this approach has not yet been questioned. It is considered better to refuse to accept an application and fee than give an applicant false hope and accept a fee for a licence that cannot be processed in time for the event.

3.27.2 Change the delegation to be strict in terms of 28 days for all events except those specified on an expanded list. In this regard members would need to specify what types of event or reason for late submission are to be included on the list to be accepted. The list could be amended in future, by the agreement of members, if novel situations arise. The same comments about possible challenge as in 3.27.1 apply.

Other Alternatives

3.28 Continue with the current scheme of delegation. The licensing team will accept all applications that at least meet the statutory 7 day public advert period. The team will do its best to manage the workload and applicants will be advised that whilst staff will do their best, processing in time for events where the application is received with less than 28 days notice cannot be guaranteed. This is not a long term solution and as stated above will impact upon the processing of applications received in good time before events. The situation is only likely to change when the Scottish Government allows for increased fees for occasional licences as this will allow for increased resources and/or put off a number of applicants from applying at all. As stated there is no known timescale for a fee

change. This option has the advantage of some flexibility for unexpected events/circumstances but will not assist with overall pressure of processing.

- 3.29 The current process for short notice applications i.e. applications made at less than the statutory 7 days' public advert period, relies on the clerk referring cases to the convener for a decision on short notice. In some cases events also come to the attention of members through general engagement with the public and instead the member would refer to the convenor. The only other options for this would be to change the delegation:

3.29.1 Change the delegation so that the clerk can choose whether to accept and process a particular application at short notice without reference to members. This has the advantage of reducing processing time in principle. However, if individual members then wish to refer a particular application the decision would rest with the clerk. A decision would be made taking account of resources available at the time. The clerk could still choose not to exercise the delegation and instead refer to the whole Board as at 3.29.2 below.

3.29.2 Change the delegation so that the clerk must refer to the whole Board each time for a majority decision on whether to accept and process a particular application at short notice. Note that this will add to the resources required for processing and likely increase the processing time for many licences.

- 3.30 Investigate the possibility of setting an additional fee for processing applications at under 28 days' notice (excepting or including funerals). This would be introduced in addition to 3.27.1 or 3.27.2. It would not be an occasional licence fee but a processing premium to reflect the diversion of resources away from other tasks to process an application at shorter notice. Such a fee could not be accurately estimated. The sum of £100 may be a reasonable start but would have to be with a view to monitoring numbers and, if appropriate, funding additional resources from there rather than premises fees. As far as the clerk is aware, this approach has never been adopted by another Board in Scotland. Therefore it is an unknown quantity and so the risk is one of possible challenge through the courts by an aggrieved applicant. Given the uncertainty, the view of the Scottish Government has been sought on this issue and can hopefully be updated at the meeting. Even if an additional fee is paid the clerk will still not be able to guarantee processing the application on time given overall demand on resources and part of the process is beyond the clerk's control. Statutory consultees must still be notified and respond in time. This lack of guarantee may lead those who pay such a premium to be aggrieved and may affect the viability of this option.

4. Background - Extended Hours Applications

- 4.1 An extended hours application allows a place that already benefits from a premises license to hold an event later than the operating plan would normally allow. Again a statutory fee of £10 applies to this. As with an occasional licence, the extension of hours should be in connection with a specified event. The event can be a special event to be catered for on the premises or a special event of local or national significance. An extension of hours can last no more

than one month. For example an applicant could apply for additional hours on each Friday and Saturday in July for a specific event. There is no prescribed form for applying for an extension of hours but the procedure is set down in the Act.

- 4.2 The Act only allows the extension of operating hours. There is no provision by which applicants can change the activities set out in the operating plan without a premises licence variation. Therefore, when the Act came in, proposals were agreed by the Board to allow the applicant to amend their activities for the duration of the extended hours within the extended hours process rather than paying a more costly variation fee. Until recently this has proved to be a flexible, pragmatic and non controversial approach. More recently the LSO has made a representation in respect of the correctness of this approach and the LSO's response has lead to a slight increase in processing time for a very small number of applications.
- 4.3 As regards processing of applications for Extension of Hours, the Board must give notice of each application to the Police and the LSO. Either may object within 10 days of receiving notice of the same.
- 4.4 The existing scheme of delegation covers straightforward and more difficult extended hours applications. There are no proposals to change the same.

5. Background - General Extension of Hours

- 5.1 Members should also note that there is a power contained in section 67 for the Board to grant a general extension of licensed hours where it is considered appropriate to do so in connection with a special event of local or national significance. Hours can be extended by such period as the Board may specify in the determination. Such a determination may apply to:
 - The whole or specified parts of the Board's area;
 - Licensed hours in general or licensed hours of specified descriptions; and
 - All licensed premises or only premises of specified descriptions.
- 5.2 The Board must give notice of the determination to the Chief Constable and all licence holders affected by the determination as well as publicise it as the Board sees fit. The Act specifically states at section 67(5) that there is no duty to trade in respect of any such determination and premises are not obliged to open.
- 5.3 Some time ago the Board agreed to generally extend hours over the Christmas and New Year period for set hours on set days. Those arrangements are published on the website and continue. In respect of other significant events the clerk reports to the Board on an event by event basis.
- 5.4 There is no proposal to change the current arrangement.

6. SUMMARY OF IMPLICATIONS

(a) Moray 2026 A Plan for the Future/Service Plan

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2026) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence

the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

Any consideration of a change in fees would have financial implications for applicants.

(d) Risk Implications

The idea behind the proposals is to put in place practical systems for dealing with these types of applications in a more efficient manner and thus save time and the resources of the Moray Council, the Moray Licensing Board and staff. This would enable staff to process more applications in good time before events.

There is always a risk, albeit low, that where the process to be adopted is novel and untested it will be challenged through the courts. If this happens then the Board could be involved in a lengthy and expensive court case that would more than negate the possible beneficial effects (in terms of time and cost) that drove the change to start with.

(e) Staffing Implications

These have been referred to throughout the report.

(f) Property

None

(g) Equalities

None

(h) Consultations

Consultation beyond the Board is not required.

7. **Conclusion**

It is proposed that the Board note the requirements of the Licensing (Scotland) Act 2005 and the proposals to deal with those requirements. The ethos behind the proposals is to comply with the Act but take a pragmatic approach to the procedural requirements given available resources.

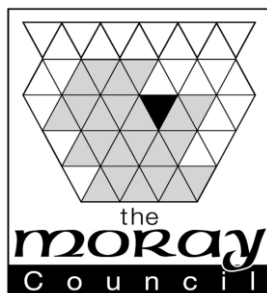
Author of Report:	Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board
Background Papers:	There are no background papers
Ref:	SAH

Signature: A. McEachan

Date: 28 September 2017

Designation: Clerk to the Board

Name: Alasdair McEachan



REPORT TO: THE MORAY LICENSING BOARD 5th OCTOBER 2017

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – CHIEF CONSTABLE’S REPORT UNDER SECTION 12A

BY: CLERK TO THE BOARD

1. Reason for Report

1.1 This report is to place before the Board a report from the Chief Constable, who has a responsibility to report certain matters to the Board on an annual basis.

2. Recommendations

It is recommended that the Board:-

2.1 Note the contents of the report attached at Appendix 1.

3. Background

3.1 The Chief Constable on 8 September 2017, submitted a report under section 12A of the Licensing (Scotland) Act 2005. This section provides that he should send a report to the Licensing Board at the end of each financial year that sets out the following information.

3.1.1 His views about matters relating to policing in the Licensing Board’s area during that year and the following year, in connection with the operation of the Licensing (Scotland) Act 2005; and

3.1.2 any steps taken during the year, or intended to be taken in the following year, to prevent the sale or supply of alcohol to children or young people in the Board’s area.

3.2 The Chief Constable’s report for 2016 to 2017 is attached at Appendix I.

4. **SUMMARY OF IMPLICATIONS**

(a) **Moray 2023 A Plan for the Future/Service Plan**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) **Policy and Legal**

Matters raised in the Chief Constable's report may be relevant to Licensing Board policy.

(c) **Financial implications**

None.

(d) **Risk Implications**

None

(e) **Staffing Implications**

None.

(f) **Property**

None.

(g) **Equalities**

None.

(g) **Consultations**

None.

5. **Conclusion**

5.1 **It is proposed that the Board note the report from the Chief Constable.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers: None

Ref: SH

Signature: A. McEachan

Date: 28 September 2017

Designation: Clerk to the Board

Name: Alasdair McEachan



**POLICE
SCOTLAND**

Keeping people safe

CHIEF CONSTABLE'S REPORT TO THE
MORAY LICENSING BOARD
FOR THE PERIOD
1ST APRIL 2016 to 31ST MARCH 2017

FOREWORD

It gives me great pleasure to provide my second annual licensing report, in accordance with section 12(A) of the Licensing (Scotland) Act 2005.

This report outlines what activity has been undertaken over the last twelve months for Moray Licensing Board which provides me with the opportunity to outline how our services will be delivered over the coming year.

Police Scotland continues to face an increasing range of demands against the backdrop of a challenging financial environment, however we will continue to work in partnership at local and national level to ensure that our communities are safe. I cannot understate the importance of empowering our people to work with others, to innovate and solve problems.

Over the last year we have seen success in our preventative problem solving approach, with officers and staff resolving issues proportionately and at the earliest opportunity. This has been possible due to the active partnerships which exist across the licensing sector, which have led to an increase in positive outcomes.

In the year ahead our approach will continue to be based on prevention and collaboration to ensure the most efficient and effective service delivery. I will encourage officers and staff to utilise the range of options available to ensure improved licensing standards, reduced violence and to positively influence behaviour and cultural attitudes across Scotland.

Finally, I would like to take this opportunity to record my thanks to all who work towards the shared aim of effective licensing regulation and I am sure that with the continued hard work and dedication of all staff, Police Scotland will continue to deliver a service that our communities can be proud of.

Mr Philip Gormley QPM

Chief Constable

Police Service of Scotland

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Police Scotland Licensing Overview

The National Licensing Policy Unit (NLPU) sits within the Specialist Crime Division – Safer Communities based at Dalmarnock Police Office, Glasgow.

The NLPU upholds the two tier structure for licensing which supports both national and local priorities through service delivery. They have overall responsibility for determining and delivering national licensing strategy and policy, by providing advice, guidance and support to divisional licensing teams.

Each of the 13 Local Policing divisions, have a Licensing Team wholly committed to the day to day management of licensing administration complying with statutory requirements as well as addressing any issues that may arise within licensed premises within their local area.

Police Scotland Licensing is supported and governed by a National IT solution known as 'Innkeeper'.

LICENSING BOARD AREA

The Licensing Board area is policed by North East Division.

Chief Superintendent Campbell Thomson is the Local Police Commander who has the responsibility for all day-to-day policing functions.

Local Policing Priorities

Following our public consultation process, the policing priorities for North East Division, as set out in our Local Policing Plan are as follows;

- Antisocial Behaviour, Violence and Disorder
- Acquisitive Crime
- Protecting People at Risk of Harm
- Road Safety and Road Crime
- Serious Organised Crime
- Counter Terrorism and Domestic Extremism

Description of Board Area

The Moray area covers the multi member wards of Elgin City North, Elgin City South, Heldon & Laich, Fochabers & Lhanbryde, Buckie, Keith & Cullen, Speyside & Glenlivet and Forres.

The community is served by larger Police Stations at Elgin, Forres, Keith, Lossiemouth and Buckie with additional smaller settlements in the community.

The majority of licensed premises are located in the main centres of population, namely Elgin, Forres, Keith, Lossiemouth and Buckie. These towns enjoy a

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relatively significant night time economy, and therefore, as a result, extra demand can often be placed on local Police resources.

Chief Inspector Maggie Miller is the Area Commander for Moray. She is based at Elgin Police Office. Her responsibilities include delivering the outcomes of the Local Policing Plan, community engagement, performance management and partnership working.

OPERATION OF THE LICENSING (SCOTLAND) ACT 2005

The North East Division Licensing Team is led by Inspector Kenny McGeough who is based at Queen Street Police Office, Aberdeen. He is supported by Sergeants Kim Wood and Gill Flett, based at Stonehaven and Queen Street Police offices respectively. Additional enquiry officers and administrative staff are located across the Division in Elgin, Inverurie, Aberdeen and Stonehaven. All staff have a division wide remit and a working knowledge of all the areas covered.

The North East Divisional Licensing Team and local Police Officers enjoy a positive working relationship with Moray Council. There has been increased communication between Police and Licensing officers who cover the Moray area and over the reporting period numerous joint visits and inspections of licensed premises in the Board area took place. During these inspections, all aspects of the running of the premises were examined, and any compliance issues were identified at an early stage and rectified.

The reporting period has also seen a concentration on inspections at licensed premises on North East Divisional Licensing Team led Local Days of Action (LDA's). These were supported by local Police Officers and Police officers deployed on the LDA's.

This approach has seen a more pro-active and operational role of the Divisional Licensing Team working closer with Community Policing Teams and has reinforced the direct partnership working required for the meaningful policing of licensed premises.

The Moray Licensing Board area saw over 2800 inspections at licensed premises in the reporting period, which is an increase of over 800 from the previous year. These inspections are vital to ensure licensed premises are being managed in accordance with the five licensing objectives, and can be considered a preventative measure. The result of the increase in inspections saw a twenty five percent reduction in incidents of assaults at licensed premises in Moray.

Partnerships

North East Division Licensing Team have a very successful and meaningful working relationship with key partners, with a focus on common goals and work towards the development and maintenance of the 5 licensing objectives.

The Divisional Licensing Team is an active member of the Local Licensing Forum and has direct input to the established Alcohol Drug Partnerships and other related multi-agency focus groups. Other areas that Police Scotland enjoys a strong working relationship with are as follows:

- Licensed Trade Association
- Community Safety Partnership
- Local Pubwatch initiatives
- Local Security Industry companies
- Voluntary organisations/Event organisers - in respect of sale/supply of alcohol at events
- Best Bar None
- Street Pastors

Problem Solving

Incident management is a critical aspect of our ongoing monitoring of licensed premises.

Police Officers submit an Incident at Licensed Premises Report via a software system (Innkeeper) on every occasion they are called to attend an incident at licensed premises with particular focus upon violence, disorder, anti-social behaviour, drunkenness, drug dealing or misuse, underage drinking, breaches of licensing legislation and any other matter that might impact on the safety of the public.

The information obtained may show a causal link, such as excessive alcohol consumption and violence, between the operation of the premises and the incident. Where necessary, a four stage process may be engaged in order to address any issues or concerns regarding the premises. This can range from low level 'interaction' which may involve a discussion between the Police and premises management or licence holder, or the premises may become 'monitored' with closer attention being paid to day-to-day operations and incidents occurring. Where necessary the premises licence holder and management may be asked to attend an 'intervention' meeting with the Police, where concerns can be discussed and may involve an agreed action plan with set time scales being put in place for the premises to remedy any matter.

The most serious status premises can attain is that of being considered 'problematic' where it is unlikely that interaction or intervention will resolve the issue and it is likely that the Police would submit a premises licence review application to the Licensing Board.

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For problematic, intervention or monitored premises a tasked visiting regime is put in place where Police Officers are tasked to visit the premises and observe their operation with a view to noting improvements, or otherwise. These tasked visits are assessed by North East Division Command Officers on a weekly basis.

Over the reporting period there have been 3 premises subject to this problem solving approach following reports of incidents at the premises. After a period of working with the respective premises management and staff, identifying areas where improvements in the running of the premises could be made, I am pleased to say that all were concluded successfully and there was no requirement to bring the licence to a review at the Moray Board.

The use of this approach continues to be very successful in resolving issues which may have previously been brought before the Board to be remedied.

Section 1

There were no reports in the Moray Board area during the reporting period of unlicensed sale or supply of alcohol.

Section 22 - Applications

Each application received from the Licensing Board is scrutinised by staff of the North East Division Licensing Team and where relevant, objections and representations are made to the Board, paying particular attention to both relevant convictions and the five licensing objectives.

Within the limits of what the legislation permits, the Chief Constable will always endeavour to bring all relevant information regarding applicants and applications before the Board to afford the fullest picture of the applicant/application to be considered in any subsequent deliberations.

When considering these applications, the North East Division Licensing Team may request analytical statistics and data relating to key times and locations that alcohol related crime and disorder was occurring within the area of a premises applying for additional hours or other change. This allows the Licensing Team to provide the Licensing Board with a more detailed view of the potential impact such a change may have in respect of one or more of the licensing objectives.

Section 36 - Application for Review of Licence

During the reporting period there were no such applications in the Board area.

Section 63 - Sale or Supply out-with Licensed Hours

There were two reports of the above offence during the reporting period. One was dealt with by way of official Police warning, whilst the licence holder at another premises received a Procurator Fiscals' warning.

Section 72 - Personal Licence Applications

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In line with the section above regarding premises applications, close scrutiny is made by the North East Division Licensing Team paying particular attention to relevant convictions and the five licensing objectives. Over the reporting period, there were no objections to personal licence applications for the Moray Board area.

Section 84 - Personal Licence Reviews

The North East Division Licensing Team has a system in place which monitors the conduct of Personal Licence holders. Should such a person be charged with any offence, this is brought to the attention of the team by the Officers dealing with that individual. The offence is looked at and should it be inconsistent with any of the five licensing objectives, consideration will be given to bringing this to the attention of the Board in respect of a Personal Licence review. In addition, should an individual be convicted of a relevant offence, this will undergo the same scrutiny. During the reporting period there was no requirement to review any Personal Licence.

Section 94 - Exclusion Orders

When an individual is charged with a violent offence on licensed premises, the reporting officers request an exclusion order within the Police report, requesting that the accused person be excluded on conviction from licensed premises in the area where the offence was committed, for a period of time the court sees fit.

Section 97 - Closure Orders

There have been no closure orders implemented during the reporting period.

Sections 111 - 116 - Drunkenness/Disorder Offences

As mentioned above, where offences such as these are detected on licensed premises following a review of incidents, the North East Division Licensing Team in conjunction with the Local Commander for the area, will decide if the premises are to be monitored. If that decision is taken, the premises will undergo an increased inspection regime.

Over the reporting period Police Officers in the Moray Board area have recorded the following common licensing offences:

Attempt to enter relevant premises whilst drunk [Sect 111(1)]	1
Drunk and Incapable on relevant premises [Sect 111(2)]	0
Disorderly conduct on premises whilst drunk [Sect 115(1)(a)]	4
Disorderly conduct/refusal to leave licensed premises [Sect 116(1)]	10

These figures are again a reduction from the previous year, the largest decrease being the Section 115 offence which has dropped from 11 to 4 offences recorded. This is an encouraging trend and it may be that through the work of Police Scotland and partners engaging with premises management and being visible within and around licensed premises, that any issues that become apparent are being dealt with at an early stage. Working alongside partners and the Community Policing Teams, a

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more pro-active operational approach has been adopted, which encourages interaction and a higher profile policing of licensed premises.

When such offences occur, these will be brought to the attention of premises management, to allow them to review their internal processes. Local Officers and the North East Division Licensing Team will offer advice and assistance and where appropriate if further intervention is required, consideration will be given to a more focussed interaction with the premises.

PREVENTING THE SALE OR SUPPLY OF ALCOHOL TO CHILDREN OR YOUNG PEOPLE

This section of the report concentrates specifically on children and young people, and the licensing objective of Protecting Children From Harm.

Given the available evidence, it would be fair to say that the Moray area does not suffer greatly from any issues surrounding the sale or supply of alcohol to children or young persons. However, that does not mean that Police Scotland remain complacent to the dangers of such behaviour.

Should there be intelligence that such practices are taking place, then Police Scotland may carry out test purchase operations. For the reporting period, no operations were required to be carried out in the Board area.

One way in which North East Division delivers on our commitment to the community is through our School Liaison Officers and School Based Officers. These Officers attend schools and other educational establishments seeking to equip our young people with the appropriate information and understanding that will allow them to make better informed decisions in key areas of their lives, both now and in the future. To this end they deliver lessons, linked to the Curriculum for Excellence, on a range of subjects including alcohol, controlled drugs and anti-social behaviour – particularly alcohol fuelled anti-social behaviour and the potential for related safety issues and consequences.

In respect of licensed events which occur out-with licensed premises, officers from the North East Division Licensing Team are consulted to ensure that appropriate conditions are sought on all such licences. In respect of larger events, the Divisional Licensing Team will also be asked to consider the suitability of the event alcohol management plan. Access to such events by children and young persons is closely scrutinised and appropriate conditions sought to regulate the limits and scope of such access.

In the Moray Licensing Board area, there were no offences contrary to the Licensing (Scotland) Act 2005 involving children and young persons.

Where offences do occur, they are always brought to the attention of the relevant licensed premises to ensure that their processes are as robust as they should be. Where shortcomings are identified within the premises, consideration will be given to engaging with the premises in line with the four stage process outlined previously.

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PROPOSED ACTIVITY

The Divisional Licensing Team intend to build on the success of adopting a more operational approach and alongside Community Policing Team and Licensing Standards Officers will continue to carry out directed Licensing related operations.

TACKLING SERIOUS ORGANISED CRIME

Many of the processes and procedures involved in licensing applications are carried out to guard against Serious Organised Crime Groups (SOCG) infiltrating the licensed trade in any way. This scrutiny is further enhanced with the nation-wide Innkeeper system. This database contains details of all liquor and civic licences for every Division in Scotland, and enhances our information sharing in respect of premises and people in the licensed trade as they move about the country and work in multiple venues.

If such an SOCG were able to gain a foothold in licensed premises this would afford the criminal group a seemingly legitimate income stream, which could be no more than a veneer for other criminal activities such as money laundering, tax evasion, drug and people trafficking and other dishonest activities.

Many of the procedures currently carried out by the North East Division Licensing Team, particularly in relation to new premises licences, the transfer of premises licences and the appointment of premises managers are done to ensure complete financial transparency and to ensure there are no business related irregularities which may be indicative of SOCG involvement.

As part of this, the North East Division Licensing Team regularly liaise with Police Interventions staff, who are aware of SOCG activity within the Division to ensure that applicants are not affiliated in any way to such groups before responding to the Licensing Board.

As far as the licensed trade is concerned within the Moray Board area, there is no intelligence available to suggest that SOCG have infiltrated liquor licensed premises.

The consistent high profile approach and interaction with licensed premises in direct correlation with the aforementioned close scrutiny in the application process should reinforce the work carried out to maintain this position.

PROPOSED ACTIVITY FOR THE YEAR AHEAD

Over the forthcoming year, the North East Division Licensing Team, in conjunction with local Police, will work alongside all licensed premises, to ensure that these premises are adhering to the spirit of the legislation, in that they all work to and fully understand the five licensing objectives.

During the coming year, the Air Weapons and Licensing (Scotland) Act will commence. Concentrating on the liquor licensing aspect of this Act, amongst other

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changes, a 'fit and proper' test will be introduced in respect of applicants. It is anticipated that this will allow Police Scotland to be even more robust in its scrutiny of applications, and, using this, we will continue to raise objections, representations and other concerns when appropriate to keep unsuitable applicants or operating practices out of licensed premises in the Board area.

This coming year also sees the beginning of the formulation of a new Licensing Policy for Moray, scheduled to be published in November 2018. Police Scotland is keen to be involved in any consultation and intend to work closely with the Board on various aspects of this and to work towards the reduction of alcohol related violence.

The team also look to use the creation of a new Licensing Board after the local elections as an opportunity to develop our partnership further by offering awareness training to new members on the role of the Police. This will cover the work carried out in relation to applications, policing of licensed premises and maintaining a meaningful relationship with the trade. This aspect of proposed activity has a clear focus on education and partnership working towards safer communities.

Our future work should build upon the success of other areas within the division such as the introduction of polycarbonate alternatives to glass which was the result of proactive and positive joint working with the licensed trade to reduce the factors and incidents of alcohol related violence.

An increased focus upon the use of analytical evidence to support direct, yet proportionate reasons for requesting that short and long term public safety orientated conditions are considered for one off events and established licensed premises.

The North East Division Licensing Team intend to continue the success of the aforementioned Local Days of Action around licensed premises, with a view to further reducing the numbers of incidents at such premises, working alongside our partners in Moray Council and the National Health Service.

We aim to improve standards and compliance across the licensed trade and tackle business practices that result in excess alcohol consumption and vulnerability, whilst supporting legitimate local traders who make a positive contribution to local economies and communities.

By doing so and by working collaboratively with our partners, we will support the licensed trade in upholding the five licensing objectives to ensure the safety and wellbeing of the people of North East Division.

NATIONAL PERSPECTIVE

Our Priorities and Policing Plans continue to be shaped by the objectives contained within Scottish Government's Strategic Objectives and National Outcomes and the Strategic Police Plan that are delivered locally through Local Outcome Improvement Plans.

Consultation and engagement is combined with our own analysis of the issues likely to impact on the safety of the public to inform our local and national Strategic Assessments that identify our priorities and provide a firm evidence base for Community Policing Teams across Scotland to deliver operational plans to prevent crime and disorder and reinforce our core focus of 'Keeping People Safe'.

Our National Priorities are:

- Antisocial Behaviour, Violence and Disorder
- Acquisitive Crime
- Protecting People at Risk of Harm
- Road Safety and Road Crime
- Serious Organised Crime
- Counter Terrorism and Domestic Extremism

The National Licensing Policy Unit (NLPU) is a specialist department which consists of a small team of Officers, based in Glasgow. The Officers within the unit work with Divisional Licensing Teams and partner agencies to help shape policy and strategy around the police licensing function. They provide practical and tactical advice to Police licensing practitioners, operational Officers, supervisors and Police Commanders.

The NLPU seek to ensure that legislation governing the sale and supply of alcohol is applied consistently across the country and all opportunities are taken to stop the illegal or irresponsible sale, supply or consumption of alcohol with the intention of preventing and reducing crime and disorder.

During 2017/18, from a licensing perspective, our particular focus will be on the following;

- Scrutiny of the serious incidents of violence, disorder and antisocial behaviour linked to licensed premises.
- Working closely with partners within a National Licensing Trade Forum we will continue to develop and promote positive partnership working between Police Scotland and the Licensed trade, in order to increase legal understanding and support a shared aim of best practice, responsible operation and respect.
- Governance and ongoing development of the National ICT Licensing System, known as "Inn Keeper", to increase the efficiency and effectiveness of liquor and civic licensing administration and management and to ensure problem solving is at the heart of our Licensing approach.
- The implementation and ongoing development of a licensing admin tool which provides Divisional Licensing Officers with an ICT product which negates the

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need to research Police systems independently and which builds on our problem solving approach.

To conclude we would like to thank you for your continued support and stress the importance of this collaborative, problem solving approach which ensures that Police, licence holders and licensed premises staff have a better understanding of their responsibilities to strengthen locally-led alcohol licensing in order to preserve order and promote safety and public health.