

THE MORAY LICENSING BOARD

THURSDAY 7 MARCH 2013

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 7th March 2013 at 10.00am.


Rhona Gunn
CLERK

27 February 2013

BUSINESS

1. Prior Minutes
 - (i) Minutes of the Meeting held on 17th January 2013 (copy attached)
 - (ii) Minutes of the Special Meeting held on 15th January 2013 (copy attached)

The Licencing (Scotland) Act 2005

2. Application for New Premises Licence – Appendix 1
3. Personal Licence Review Hearing Following Premises Licence Review (Case Number 3 of 2013) – Report by the Clerk (copy attached)
4. Personal Licence Review Hearing Following Application For Review by the Chief Constable (Case Number 4 of 2013) – Report by the Clerk (copy attached)
5. Personal Licence Review Hearing Following Application For Review by the Chief Constable (Case Number 5 of 2013) – Report by the Clerk (copy attached)
6. Personal Licence Review Hearing Following Application For Review by the Chief Constable (Case Number 6 of 2013) – Report by the Clerk (copy attached)
7. Personal Licence Review Hearing Following Application For Review by the Chief Constable (Case Number 7 of 2013) – Report by the Clerk (copy attached)
8. Personal Licence Review Hearing Following Application For Review by the Chief Constable (Case Number 8 of 2013) – Report by the Clerk (copy attached)
9. Further Options for Alcohol Licensing A Scottish Government Consultation Paper – Report by the Clerk (copy attached)
10. A Consultation Paper on Proposed Changes to Implementing Legislation for the EU Service Directive to Allow for National Applicability of Licences – Report by the Clerk (copy attached)

Equality Act 2010

11. Public Sector Equality Duties – Report by the Clerk (copy attached)

Public Records (Scotland) Act 2011

12. Duty to Prepare a Records Management Plan – Report by the Clerk (copy attached)

| | |
|-----------------|--|
| CONTACT PERSON: | Rhona Gunn |
| Telephone No: | 01343 543451 Ext 3152- Direct Line: 563152 |
| Room No: | 102 |

THE MORAY LICENSING BOARD**SEDERUNT****COUNCILLOR J ALLAN****COUNCILLOR G ALEXANDER****COUNCILLOR S CREE****COUNCILLOR M HOWE****COUNCILLOR B JARVIS****COUNCILLOR A MCLEAN****COUNCILLOR M McCONACHIE****COUNCILLOR R H SHEPHERD****COUNCILLOR C TUKE**

CLERK TO THE BOARD: Mrs R Gunn

Telephone No: 01343 543451 Ext 3152 - Direct Line: 563152

Room No: 102

APPENDIX I

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.

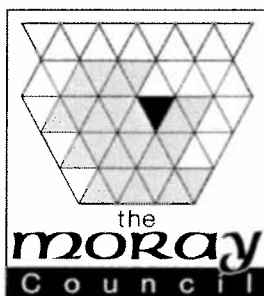
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|--------|--|
| RED | Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. There may be ongoing negotiations to resolve problems. |
| YELLOW | Indicates 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. |

MORAY LICENSING BOARD LICENSING BOARD

MEETING, 7 MARCH 2013 at 10:00am in Council Chambers, Council Buildings, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

| Variation (Major)(s) | Premises | Applicant | Date Received | Comments |
|----------------------|---|----------------|-----------------|---|
| | SPAR 16 ST PAULS STREET BUCKPOOL BUCKIE AB56 1EJ | SHAKEEL ARSHAD | 29 January 2013 | Variation to increase capacity from 5m ³ to 12.5m ³ due to shop refit. No objcs/reps. Applicant not cited to attend. Paperwork in order. |



ITEM: 3

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REPORT TO: THE MORAY LICENSING BOARD 7 MARCH 2013

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING PREMISES LICENCE REVIEW (CASE NUMBER 3 OF 2013)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Licensing (Scotland) Act 2005 section 84 provides that in the course of a review hearing in respect of any premises licence, a Licensing Board may make a finding that a personal licence holder acted in a manner which was inconsistent with any of the licensing objectives whilst working in the licensed premises.

1.2 This report is to notify the Board:

1.2.1 At their meeting on 14th June 2012, pursuant to section 84 and whilst undertaking a review of the premises licence (case reference 3 of 2012), they made a finding that the personal licence holder (case number 3 of 2013) had acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance (paragraph 7 of the minute refers).

1.2.2 That, as a result of that finding, s.84(5) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to review the personal licence and consider and determine whether any further order should be made in respect of the personal licence for the purposes of any of the licensing objectives. This is the deferred hearing, paragraphs 3.1 to 3.5 detail the history.

2. RECOMMENDATIONS

It is recommended that the Board:-

2.1 Note the requirement to hold a personal licence review hearing following the making of a finding against the personal licence holder during the premises licence review;

2.2 At the hearing, after giving the licence holder concerned and such other persons as they consider appropriate, an opportunity to be heard, consider the matter and determine whether one of the possible orders set out in paragraph 3.6 is necessary for the purposes of any of the licensing objectives.

3. BACKGROUND

3.1 At their meeting of 14th June 2012 the Licensing Board undertook a review of the premises licence (case reference 3 of 2012) and decided to vary the operating plan of the premises licence and review the premises licence further after a period of 6 months had passed (paragraph 7 of the minute refers).

3.2 At their meeting of 14th June 2012 the Board agreed to defer consideration of the issue as to whether the personal licence holder had acted in a manner that was inconsistent with the licensing objectives to the following meeting (paragraph 7 of the minute refers).

3.3 Section 84 of the Licensing (Scotland) Act 2005 provides that if, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding that a personal licence holder acted in a manner which was inconsistent with any of the licensing objectives whilst working in the licensed premises, then the Board shall go on to review the personal licence.

3.4 At their meeting on 9th August 2012 the Board agreed to defer consideration of any possible action in respect of the personal licence until the subsequent review of the premises licence, after the 6 month period (paragraph 5 of the minute refers).

3.5 At the meeting on 17th January 2013 the Board decided to take no further action in respect of the premises licence review and to hear the personal licence review at the current meeting (paragraph 6A of the minute refers).

3.6 At the hearing the Licensing Board may, after giving the licence holder concerned, and such other persons as they consider appropriate, the Board consider appropriate an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make one of the following orders:

3.6.1 revoking;

3.6.2 suspending for such period, not exceeding 6 months, as the Board considers appropriate; or

3.6.3 endorsing;

the personal licence held by the licence holder concerned.

- 3.7 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

4 **IMPLICATIONS**

(a) **Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) **Policy and Legal**

Legal implications have been explained above.

(c) **Financial Implications**

None

(d) **Risk Implications**

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective and whether the risk justifies further intervention on this ground.

(e) **Staffing Implications**

None.

(f) **Property**

None.

(g) **Equalities**

There are no issues in this case.

- (h) **Consultations**
Consultation is not required.

5 CONCLUSION

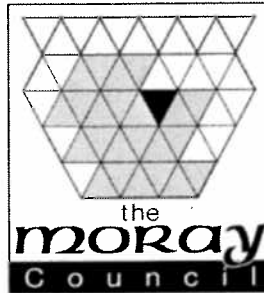
- 5.1 **It is proposed that the Board note the requirement to hold a review hearing following the review hearing of the premises licence;**
- 5.2 **It is proposed that the Board hear from the licence holder and any appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.6 is necessary for the purposes of any of the licensing objectives.**

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

Signature _____

26/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board
Name Rhona Gunn



ITEM: 4

PAGE: 1

REPORT TO: THE MORAY LICENSING BOARD 7 MARCH 2013

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 4 OF 2013)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Licensing (Scotland) Act 2005 section 84A provides that the Chief Constable has the power to report conduct inconsistent with the licensing objectives.

1.2 This report is to notify the Board:

1.2.1 That the Chief Constable has provided a report under section 84A as he considers that the personal licence holder (case number 4 of 2013) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder and securing public safety.

1.2.2 That, as a result, s. 84A(2) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order should be made in respect of the personal licence for the purposes of any of the licensing objectives.

2. RECOMMENDATIONS

It is recommended that the Board:-

2.1 Note the requirement to hold a review hearing following the report by the Chief Constable;

2.2 Note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives;

3. **BACKGROUND**

- 3.1 On the 21st January 2013 the Clerk received a report under s 84A from the Chief Constable.
- 3.2 A copy of the report referred to in paragraph 3.1 above has been separately circulated to members. It should be noted that in this case the Chief Constable has included a recommendation for revocation.
- 3.3 This report is to notify the Board of the requirement under s. 84A(2) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's report.
- 3.4 At the hearing the Licensing Board may, after giving the licence holder concerned, the Chief Constable and any other person(s) the Board consider appropriate an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make one of the following orders:
- 3.4.1. revoking;
 - 3.4.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.4.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.5 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

4. **IMPLICATIONS**

(a) **Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-

social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective:

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective and whether the risk justifies further intervention on this ground.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the Chief Constable's report and the requirement to hold a review hearing;

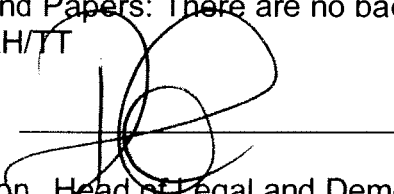
5.2 It is proposed that the Board note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives.

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

Background Papers: There are no background papers

Ref: SAH/TT

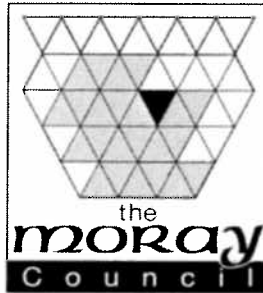
Signature



26/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn



ITEM: 5

PAGE: 1

REPORT TO: THE MORAY LICENSING BOARD ON 7 MARCH 2013

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 5 OF 2013)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Licensing (Scotland) Act 2005 section 84A provides that the Chief Constable has the power to report conduct inconsistent with the licensing objectives.

1.2 This report is to notify the Board:

1.2.1 That the Chief Constable has provided a report under section 84A as he considers that the personal licence holder (case number 5 of 2013) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder and securing public safety;

1.2.2 That, as a result, s.84A(2) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order should be made in respect of the personal licence for the purposes of any of the licensing objectives.

2. RECOMMENDATIONS

It is recommended that the Board:

2.1 Note the requirement to hold a review hearing following the report by the Chief Constable;

2.2 Note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives;

3. **BACKGROUND**

- 3.1 On the 28 January 2013 the Clerk received a report under s.84A from the Chief Constable.
- 3.2 A copy of the report referred to in paragraph 3.1 above has been separately circulated to members. It should be noted that in this case the Chief Constable has included a recommendation for revocation.
- 3.3 This report is to notify the Board of the requirement under s.84A(2) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's report.
- 3.4 At the hearing the Licensing Board may, after giving the licence holder concerned, the Chief Constable and any other person(s) the Board consider appropriate an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make one of the following orders:
- 3.4.1. revoking;
 - 3.4.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.4.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.5 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

4. **IMPLICATIONS**

(a) **Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-

social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective and whether the risk justifies further intervention on this ground.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the Chief Constable's report and the requirement to hold a review hearing;

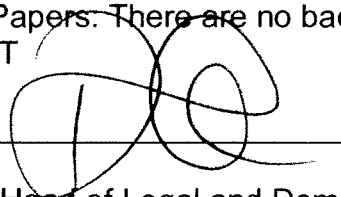
5.2 It is proposed that the Board note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives.

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

Background Papers: There are no background papers

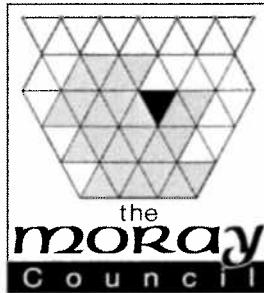
Ref: SAH/TT

Signature



26/4/13

Designation Head of Legal and Democratic Services, Clerk to the Board
Name Rhona Gunn



ITEM: 6

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REPORT TO: THE MORAY LICENSING BOARD ON 7 MARCH 2013

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 6 OF 2013)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Licensing (Scotland) Act 2005 section 84A provides that the Chief Constable has the power to report conduct inconsistent with the licensing objectives.

1.2 This report is to notify the Board:

1.2.1 That the Chief Constable has provided a report under section 84A as he considers that the personal licence holder (case number 6 of 2013) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder and securing public safety;

1.2.2 That, as a result, s.84A(2) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order should be made in respect of the personal licence for the purposes of any of the licensing objectives.

2. RECOMMENDATIONS

It is recommended that the Board:

2.1 Note the requirement to hold a review hearing following the report by the Chief Constable;

2.2 Note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives;

3. **BACKGROUND**

- 3.1 On the 28 January 2013 the Clerk received a report under s.84A from the Chief Constable.
- 3.2 A copy of the report referred to in paragraph 3.1 above has been separately circulated to members. It should be noted that in this case the Chief Constable has included a recommendation for revocation.
- 3.3 This report is to notify the Board of the requirement under s. 84A(2) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's report.
- 3.4 At the hearing the Licensing Board may, after giving the licence holder concerned, the Chief Constable and any other person(s) the Board consider appropriate an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make one of the following orders:
- 3.4.1. revoking;
 - 3.4.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.4.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.5 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

4. **IMPLICATIONS**

(a) **Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-

social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective and whether the risk justifies further intervention on this ground.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the Chief Constable's report and the requirement to hold a review hearing;

5.2 It is proposed that the Board note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives.

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

Background Papers: There are no background papers

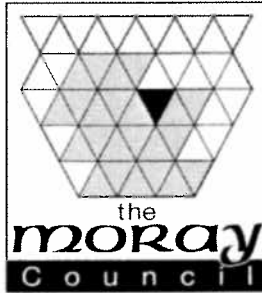
Ref: SAH/TT

Signature

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn

26/2/13



ITEM: 7

PAGE: 1

REPORT TO: THE MORAY LICENSING BOARD ON 7 MARCH 2013

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 7 OF 2013)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Licensing (Scotland) Act 2005 section 84A provides that the Chief Constable has the power to report conduct inconsistent with the licensing objectives.

1.2 This report is to notify the Board:

1.2.1 That the Chief Constable has provided a report under section 84A as he considers that the personal licence holder (case number 7 of 2013) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder and securing public safety;

1.2.2 That, as a result, s.84A(2) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order should be made in respect of the personal licence for the purposes of any of the licensing objectives.

2. RECOMMENDATIONS

It is recommended that the Board:

2.1 Note the requirement to hold a review hearing following the report by the Chief Constable;

2.2 Note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives;

3. **BACKGROUND**

- 3.1 On the 5 February 2013 the Clerk received a report under s.84A from the Chief Constable.
- 3.2 A copy of the report referred to in paragraph 3.1 above has been separately circulated to members. It should be noted that in this case the Chief Constable has included a recommendation for revocation.
- 3.3 This report is to notify the Board of the requirement under s. 84A(2) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's report.
- 3.4 At the hearing the Licensing Board may, after giving the licence holder concerned, the Chief Constable and any other person(s) the Board consider appropriate an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make one of the following orders:
- 3.4.1. revoking;
 - 3.4.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.4.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.5 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

4. **IMPLICATIONS**

(a) **Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

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environmental aspects of the Corporate Plan. With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective and whether the risk justifies further intervention on this ground.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the Chief Constable's report and the requirement to hold a review hearing;

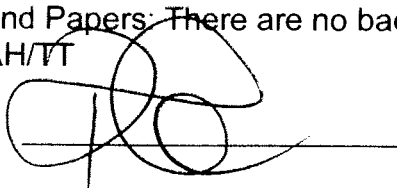
5.2 It is proposed that the Board note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives.

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

Background Papers: There are no background papers

Ref: SAH/TT

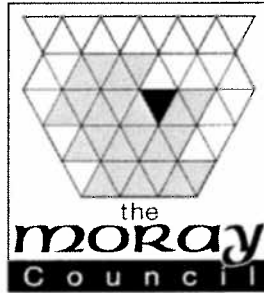
Signature



26/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn



ITEM: 8

PAGE: 1

REPORT TO: THE MORAY LICENSING BOARD ON 7 MARCH 2013

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 8 OF 2013)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Licensing (Scotland) Act 2005 section 84A provides that the Chief Constable has the power to report conduct inconsistent with the licensing objectives.

1.2 This report is to notify the Board:

1.2.1 That the Chief Constable has provided a report under section 84A as he considers that the personal licence holder (case number 8 of 2013) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder and securing public safety;

1.2.2 That, as a result, s.84A(2) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order should be made in respect of the personal licence for the purposes of any of the licensing objectives.

2. RECOMMENDATIONS

It is recommended that the Board:

2.1 Note the requirement to hold a review hearing following the report by the Chief Constable;

2.2 Note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives;

3. **BACKGROUND**

- 3.1 On the 12 February 2013 the Clerk received a report under s.84A from the Chief Constable.
- 3.2 A copy of the report referred to in paragraph 3.1 above has been separately circulated to members. It should be noted that in this case the Chief Constable has included a recommendation for revocation.
- 3.3 This report is to notify the Board of the requirement under s. 84A(2) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's report.
- 3.4 At the hearing the Licensing Board may, after giving the licence holder concerned, the Chief Constable and any other person(s) the Board consider appropriate an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make one of the following orders:
- 3.4.1. revoking;
 - 3.4.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.4.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.5 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence.

4. **IMPLICATIONS**

(a) **Council/Community Planning Priorities**

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and

environmental aspects of the Corporate Plan. With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective and whether the risk justifies further intervention on this ground.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the Chief Constable's report and the requirement to hold a review hearing;

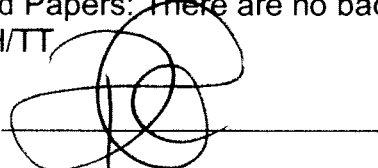
5.2 It is proposed that the Board note any recommendations from the Chief Constable, hear from appropriate person(s), consider the matter and determine whether one of the possible orders set out in paragraph 3.4 is necessary for the purposes of any of the licensing objectives.

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

Background Papers: There are no background papers

Ref: SAH/TT

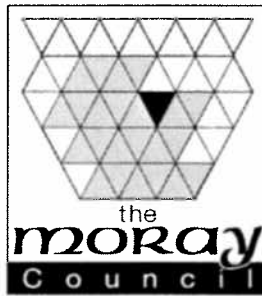
Signature



20/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn



ITEM: 9

PAGE: 1

REPORT TO: THE MORAY LICENSING BOARD ON 7 MARCH 2013

**SUBJECT: FURTHER OPTIONS FOR ALCOHOL LICENSING
A SCOTTISH GOVERNMENT CONSULTATION PAPER**

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 The reason for this report is to invite members to approve comments on the consultation questions for submission to the Scottish Government prior to conclusion of the consultation on the 21st March 2013.

2. RECOMMENDATIONS

- 2.1 **It is recommended that the Board approve the comments prepared by the Depute Clerk in concert with the policy sub group and instruct the Clerk to respond to the consultation, including any further comments from the Board, before the 21st March 2013 deadline.**

3. BACKGROUND

- 3.1 At the meeting of the Board on the 17th January 2013 (paragraph 7 of the minute refers) details were put forward of the Scottish Government's consultation on future provisions for alcohol licensing, designed as part of a programme of work to update and improve licensing in general.
- 3.2 The Board agreed to remit consideration of the consultation to the policy sub group. The policy sub group met on the 14th February 2013 to discuss the consultation and provide comments on the same. A copy of the draft consultation response document is attached at **Appendix I**.
- 3.3 Members are now asked to provide any additional views and, as a Board, provide the Clerk with instructions to respond to the Scottish Government before the deadline.
- 3.4 Members are reminded that they are also free to submit individual or group responses directly to the Scottish Government for consideration.

4. SUMMARY OF IMPLICATIONS

- (a) **Council/Community Planning Priorities**
No specific implications.
- (b) **Policy and Legal**
Any implications have been outlined above.
- (c) **Financial implications**
The financial implications of these proposals are not clear at this time. There are a great many proposals, none of which are finalised, some of which, if implemented, may well have financial consequences in terms of increased workload and cost.
- (d) **Risk Implications**
None.
- (e) **Staffing Implications**
As with financial implications.
- (f) **Property**
None.
- (g) **Equalities**
The Equalities Officer has been consulted with particular regard to the proposal (Proposal 10) about requiring licence holders and/or a member of staff present at all times to have a reasonable command of English. The Equalities Officer was of the opinion that there is the risk of indirect discrimination on grounds of race. The measure can only be justified if it serves a cause that is lawful and necessary in a democratic society and that cause cannot be served by less intrusive means. However, to date, licence holders lacking an understanding of English does not appear to have been a problem in Moray.
- (h) **Consultations**
This is a response to a consultation. Copies of the consultation have been widely circulated by the Scottish Government.

5. **CONCLUSION**

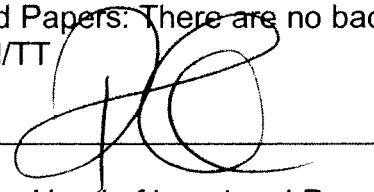
- 5.1 That the Board considers the recommendations set out in paragraph 2 of the report.

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

Background Papers: There are no background papers

Ref: SAH/TT

Signature



26/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn



The Scottish
Government
Riaghaltas na h-Alba

ANNEX C: CONSULTATION QUESTIONNAIRE

Further options for alcohol licensing – consultation paper

RESPONDENT INFORMATION FORM

Please **Note** this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

THE MORAY LICENSING BOARD

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

| | | |
|-----------------|-----------|-------|
| COUNCIL OFFICES | | |
| HIGH STREET | | |
| ELGIN | | |
| MORAY | | |
| Postcode | IV 30 1BX | Phone |
| | | Email |

3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

 Yes

 No

CONSULTATION QUESTIONS

Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes, including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.

1. Are you responding as an;

- (a) individual
- (b) on-trade business
- (c) off-trade business
- (d) members' club
- (e) local authority
- (f) another business or organisation, please specify

Comments

2. Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?

Yes No

Policy Sub Group Comments

Yes - unless adult supervision remains in place. The circumstances of the supply make the context as to whether it is suitable.

Additional Comments

Yes in principle.

There are always difficulties with the definition of what is a public place and further guidance on the issue would be helpful. It does not seem to relate purely to ownership. Phrases such as "a place to which the public have unrestricted access" in the Civic Government (S) Act 1982 are often difficult to interpret and lead to inconsistencies between authorities.

There should be some consistency between licensed premises and public places so that the law is clear.

The consultation refers to byelaws. In byelaw areas it is likely that consumption by anyone (over or under 18) would be prohibited. So it is really relevant to non byelaw areas.

3. Are there specific circumstances in which this should not be illegal?

Yes No

The only qualification is that young persons aged 16 and 17 can consume certain types of alcohol with a meal on licensed premises – if purchased by

an adult. Licensed premises will presumably not be public places or will be public places but will be exempt if they are licensed.
In non byelaw areas the supply of alcohol to those aged 16 and 17 with a meal in a public place should not be criminalised.
It does create the problem of 'what is a meal?' and the picnic example in the consultation is difficult. However most seem to accept (on licensed premises) that a meal is equivalent to more than mere snacks.
There may also be outside areas of licensed premises that are not covered as part of the licensed area. This would happen more in non byelaw areas as a result of historical factors. Therefore a complete ban could criminalise behaviour in a pub garden that is not criminal inside the pub if the garden is not covered by the licence. This, of course, could be addressed by applications for variations to include outside areas if licensed premises are exempt.

4. Does section 97 form a suitable basis on which to provide extended police power?

Yes No

The current s.97 is about a single premise. It would not be suitable to just substitute "any or all premises in a specified area" for "any licensed premises".
S.97 also refers to closure orders i.e. closing the premises entirely and not just preventing the sale / consumption of alcohol. The idea seems to be to restrict the sale of alcohol.
Football / other major events / even licensed premises themselves (other than purely vertical drinking establishments) may be happier to be more family friendly affairs where the premises may be open for food and soft drinks.

5. Should the procedure under section 97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?

Yes No

Policy Sub Group Comments

There is usually ample knowledge of events in advance in order to plan and this additional power seems overkill entirely. In addition the effect of such an order may be to leave all supporters on the streets instead, maybe with a carry out.

Additional Comments

One difficulty is that the definition of senior officer was reduced from superintendent to inspector. If the power is extended then the definition of senior officer need to be reviewed – probably upwards from inspector.

The examples given refer to football matches. Those are generally known about in good time. Therefore there may be time to apply to a Licensing Board.

However s.97 also allows for emergency closure, on the say of the police, for a period not exceeding 24 hours. The power is expressed to be where necessary without applying to the Board. Licensing Boards do not keep out of hours procedures for emergencies. The police will be able to use emergency closure orders for an extended number of premises for up to 24 hours. That would easily cover a football match and there is no provision for appeal. If there is no appeal then there is no check on whether the police have applied the tests in s.97(2).

Application to either a Board or Sheriff (or indeed JPs) would introduce a measure of control. However Sheriff Courts also keep out of hours procedures and contacts for emergencies. Application to the Sheriff would presumably also provide for an appeal system, even if appeals are unlikely to be worth it in practical terms.

6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors' boxes/corporate hospitality, etc.?

Yes No

Policy Sub Group Comments

Yes for closed functions like weddings. Not for director's boxes as that defeats the object.

Additional Comments

Yes – weddings and other functions have to be arranged often more than a year in advance.

Football games can be arranged at much shorter notice.

To book a wedding and then have the event cancelled by the subsequent arrangement of a football match would not be acceptable.

7. Should Boards be able to impose additional conditions to apply variations to opening hours, for some or all licensed premises, to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?

Yes No

Policy Sub Group Comments

There is not perceived to be a need for this in Moray as it is not a particular problem.

Additional Comments

Conditions may be a cumbersome process as the notes to the consultation suggest. Placing conditions on licences, even for a limited period is difficult. Conditions are very difficult to draft to be definite.

An alternative may be to extend the scope of s.67 to provide for general restrictions as well as extensions – with suitable amendments e.g. s.67(5) would not apply to restrictions.

It would also have to be made clear that any restriction could apply to off sales as well as on, in order to restrict availability.

This idea may restrict appeals unless applicants can apply for extended hours contrary to the restriction and that application will consider their individual circumstances and then, if refused, they can appeal that refusal. Both proposals 2 and 3 are stated to relate to football but it may not be appropriate to cover only football matches as that could be viewed as disproportionate. Should it cover any event likely to cause disorder that meets the high test of significant risk?

Significant risk conflicts with the Board considering it “appropriate” in s.67.

There would need to be further guidance on the issues.

Again any restriction on hours or opening should be clear as to whether the premises must close completely or whether it can trade in drinks other than alcohol and food.

8. Do you have concerns about this proposal, and if so, what are they?

Yes No

As above.

Individual interpretation by Licensing Boards on this and any matter will inevitably lead to different approaches.

In addition it would not be immediately clear to visiting supporters as to what is happening in local areas and it is difficult to see how the information would be disseminated.

Visiting supporters may do so anyway but it would be an incentive to pre-load with alcohol before arriving in the area, which may lead to increased periods of alcohol use.

9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?

Yes No

Policy Sub Group Comments

The power to do so would seem advantageous but it is difficult to envisage many circumstances in which the power would be useful.

Additional Comments

Qualified.

This is a power that may fix certain problems but create others.

The usual considerations for conditions apply i.e. conditions will be very difficult to draft and approaches will vary between Boards and so licence holders will face varying degrees of scrutiny and regulation.

It is difficult to see what additional conditions might be relevant to all

licensed premises. That may lead to things like extensions of the definitions of irresponsible promotions and, consequently, whether s.27(7) should be amended.

It is also unclear as to whether the condition(s) would have to apply to all licensed premises or whether it could be applied to a specific section of premises (geographically or by type).

The only situation in which this was perceived to be useful in Moray was to deal with members' clubs. However those are referred to specifically elsewhere in the consultation.

10. What procedures should apply before such conditions are applied and what rights of appeal would be appropriate?

Yes No

Policy Sub Group Comments

Consultation would be required as conditions would be difficult to draft. An appeal system would be needed and that may be best to the Sheriff. However individual rights of appeal could defeat object.

Additional Comments

It would be interesting to see examples of local matters that cannot be addressed by current conditions or national conditions as prescribed. As breaches of conditions are being treated as s.1 offences by the police, new conditions on the licence effectively create potential criminal sanctions. That being the case it may be suitable for Boards that wish to apply a local condition to undertake consultation and then put forward the results of that to ministers for approval – in a similar fashion to byelaws.

Any condition that survives that process perhaps need not have specific appeal procedures.

They would not count as mandatory conditions. Therefore it would still be open for licence holders to apply to vary the licence so as to remove the condition if it was unreasonable for them. Any refusal would then be subject to appeal. Any successful appeal could then lead to a systematic eradication of the condition through a succession of appeals. If there is a proper consultation and independent vetting in advance of the conditions then appeals may not be necessary.

11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a 'fit and proper' person?

Yes No

Policy Sub Group Comments

The licensing objectives are sufficiently wide so as to encompass any matter that could reasonably be taken into account. There is not a need for

a further test, particularly where it will lead to the police adducing further evidence that falls short of a conviction in order to challenge a licence.

Additional Comments

The consultation makes reference to the system of relevant offences being complex and difficult for the trade to understand.

However it has the advantage of a degree of objectivity and more certainty in respect of offences that will be taken into consideration.

Certain applications under the Civic Govnt (S) Act 1982 take into account any offences ever committed by the applicant. There is a subjective process to determine whether spent convictions are relevant and then a subjective process of determining fitness. This totally goes against the principles of rehabilitation of offenders.

That has to be balanced with the public interest.

Relevant offences are relatively clearly defined and the same for everyone.

This will encourage debate over the use of spent convictions and the consideration by Boards of material that is subject to ongoing criminal proceedings or event pending charges.

Boards struggle with the concept of sub judice. In addition the police are already bringing a wider range of information to Boards earlier in the criminal process (under s.84A). That means Boards are considering actions that are subject to pending charges and possibly issuing a punishment to licence holders. Then the same actions result in a relevant conviction and the Board is required to hold a further review hearing. Could or should that result in further punishment for the same facts?

Licence holders do not understand the differing standards of proof and that Boards can consider matters that are subject to a charge and so are unproven in court.

There is argument to say that someone is innocent until proven guilty, unless they need a licence.

Section 84A is sufficient for the police to introduce such information.

In addition there is later reference to hearings being held entirely in public.

The police will also argue that this restricts their ability to bring forward intelligence. That has a bearing on this section.

12. Should there be a definition of 'fit and proper' and if so, what should it consist of?

Yes No

Policy Sub Group Comments

The concept seems impossible to define so maybe not. It should not take account of spent convictions.

Additional Comments

For certainty for applicants and consistency amongst decision makers there should be as much of a definition as is possible.

Fitness is subjective. Leaving the matter open makes it easier from a decision making perspective but less satisfactory for applicants.

The question would be whether this is to move towards more of a Civic Govnt (S) Act type system where potentially further offences could be taken into account e.g. those that are spent.

It needs to be clear as to what fitness really relates to e.g. domestic offences. Is that relevant to fitness to hold a licence to sell alcohol or fitness to hold any sort of licence that would allow the pursuit of a business. Does it then make a difference as to whether it is relevant to holding a premises licence or a personal licence? Should there be separate considerations given the differing roles?

HMRC consider fit and proper in relation to charity trustees and look at matters largely related to tax offences. Similar the FSA look at fitness in relation to the controlled function that an individual will undertake, not necessarily because they are 'bad' in general. That would indicate that only matters relevant to the sale of alcohol are relevant.

It has been said in relation to taxis that "... the purpose of the power of suspension is to protect the users of licensed vehicles and those who are driven by them and members of the public. Its purpose is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault people"

Not all premises licence holders are personal licence holders. Indeed the concept is that premises licence holders can be individuals / corporate bodies or even unincorporated associations.

Fit and proper is often considered in two ways – both in terms of honesty / integrity (through criminal behaviour checks) and in terms of competence / capability (often through training). There is a potential danger that some authorities will try and merge the two by making individuals or directors or interested parties that intend to hold a premises licence undergo some form of training, which may not always be relevant.

Other statutes do try and more closely define a fit and proper person e.g. Northern Territory Consolidated Acts AGENTS LICENSING ACT - SECT 20 (as attached at Appendix 1 with adaptations.

13. Should Boards be placed under a statutory obligation to promote the licensing objectives?

Yes No

Policy Sub Group Comments

No as this would be more onerous than a decision making process. Neither would it be appropriate to require licence holders to promote the objectives as it may create conflict with their business interests.

Additional Comments

Not unless it is done in conjunction with other matters.

At first it is difficult to see how such an obligation would affect matters in practise. As the guidance states, Boards have regard to the objectives in decision making and promote the objectives through policy.

However a positive obligation to promote the objectives could be a greatly increased burden for Boards.

It is not clear as to whether the active promotion is purely in respect of decision making or in general. In the latter case Boards would not have the resources to engage in activities within the community to promote the licensing objectives.

The whole process becomes something akin to the duty to publish equality outcomes and actively pursue those. Boards could be drawn into the situation of taking active steps.

This is not itself a bad idea e.g. promoting the protection of children through measures to educate the trade, parents and children themselves in the responsible use of alcohol.

However Boards needs the resources to do that. In Moray the Board is already running at a loss.

The proposal for a requirement to promote the objectives should be considered in the light of both the licensing fee review and the social responsibility levy. Implementation of the levy has been delayed due to the economic climate. It is suggested that this proposal should also be considered at that time.

The fee review should allow Boards to recover the full expense of the licensing process.

Additional measures to promote the objectives should then be funded through the levy.

14. What impact would this have on the work of Boards?

Yes No

A duty to promote the objectives may seem to make it easier for Boards to refuse applications. If the Board is bound to promote the objectives then the Board is bound to refuse applications. It is difficult to see where the line would be drawn.

Form a health perspective the idea is to reduce overall consumption. Health forums will therefore push for as many refusals as possible. That is their motivation and they will use that more to object to applications.

Any alcohol retailer is part of the 'general consumption' problem. Therefore to promote the health objective the problem must be eliminated and so any application must be refused. This would obviate the need for an overprovision statement. However, that is perhaps oversimplifying the logic for effect. The matter may be more properly dealt with through increased preparation for and guidance on the use of overprovision statements. That links to later in the consultation.

However there is no doubt that an increased number of refusals will lead to increased levels of litigation and that will dramatically reduce the funds available to Boards.

The alternative might be to place a duty on applicants/premises to promote the objectives. That could be in a similar way to applicants providing a disability access statement. Many applicants already provide a statement as to how they will promote the objectives in their premises.

15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?

Yes No

Policy Sub Group Comments

The Board already provides annual statistics to the Scottish Government.

Additional Comments

As above.

Without the additional duties and additional resources to pursue those duties, this information will give no more than the statistics collected on a national basis e.g. refusals and reasons for refusals.

16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?

Yes No

As above.

17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?

Yes No

Policy Sub Group Comments

There is no need for a statutory duty unless it is linked to the above as duties. This is good policy making practise anyway.

Additional Comments

This is a good idea in principle. Policy should be evidenced based as opposed to simple view of the Board members.

However, guidance will be needed on what information is available and how to use it.

In Moray evidence is currently being gathered in respect of overprovision.

This is proving to be a very difficult process. Fortunately one of our LLF partners has offered staff resource in terms of a Research and Information officer to gather, analyse and report on available stats. Without someone like that – or very detailed guidance – Boards will struggle.

Again given the general lack of resources amongst some Boards procuring

such services other than through the LLF would be difficult. It would be helpful for Boards to be provided with a list of data sources relevant to the objectives and ideas as to how to research the local position from there. This could be a task for the national licensing forum if a national policy is to be developed. The national policy could set out the national picture and Boards could then build on that locally, choosing local priorities. This again would be similar to the process of gathering evidence and publishing equality outcomes.

18. What benefits would such a statutory duty bring?

Policy Sub Group Comments

Consistency.

Additional Comments

Much more robust policy that should be less open to challenge. This can be linked to the measures proposed below. It would provide increased justification for proposals 19 and 20.

19. Should the period that a statement of licensing policy is in force be extended to five years?

Yes No

Policy Sub Group Comments

No need for 3 year reviews. Policies do not tend to change that much and 5 years is an acceptable period, especially as a policy can be reviewed at any time if required.

Additional Comments

There is no detriment to this when coupled with other measures and viewed in the light that policy can be amended at any time.

In fact this will be absolutely necessary when considering a planning type process. In those cases the policy itself can take several years to produce as the work is front loaded into policy development rather than application consideration.

It may give potential applicants a clearer idea of whether an application would be favourably received. It may even lower the rate of refusals as a result.

20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?

Yes No

Policy Sub Group Comments

Maybe but only after a reasonable introductory period of, say, 6 months. Policy based decision making would be less flexible in approach than dealing with individual cases on their merits. If it would not prevent challenges to decisions anyway that is a serious limiting factor.

Additional Comments

This gives certainty for all interested parties. Planning appears to be more strict in terms of application of policy. It generally appears that planning is a more rigid regime. Planning policy decides the majority of applications rather than each application being considered and decided on its own merits. Policy becomes a presumption against applications unless there is good reason to depart from the policy. There needs to be more flexibility in terms of licence applications. Policy would incorporate overprovision but may then also incorporate areas or types of operations where applications may be encouraged. Overprovision gives rise to a presumption against new licences. General consultation on that seems to be acceptable in all the circumstances and Boards consult widely on policy issues. There may therefore be less of a need to strengthen consultation procedures.

21. Is there currently an issue with licence holders who do not have a reasonable command of English?

Yes No

Policy Sub Group Comments

This has not been an issue in Moray.

Additional Comments

This is not a particular issue in Moray. There have been few persons involved with licensed premises that do not have a reasonable command of English. There was one case where it led to potential fraud. Other than that all applications have been in English and all training the same.

22. If there is a problem, what would be your preferred means to address this?

Policy Sub Group Comments

It would be preferable to have someone with a reasonable command of English on premises rather than try and address the issues through a personal licence holder. A personal licence holder is not always present.

Additional Comments

As above.

23. Would expanding the scope of the Act from 'sale' to 'sale and supply' address the uncertainties created by Brightcrew?

Yes No

No because it would still appear to be linked to alcohol.
Other preferred options below.

24. Would placing a general duty on Boards to 'promote' rather than 'have regard' to the licensing conditions address the uncertainties created by Brightcrew?

Yes No

None

25. Would making clear that the Act allows regulation of the sale of alcohol or other activities in the licensed premises within licensed hours address the uncertainties created by Brightcrew?

Yes No

Policy Sub Group Comments

This is not within the Board's remit in terms of regulating the sale of alcohol. It would be very difficult to define what is related. It is agreed that Boards should not be duplication of other regimes. Therefore the system should remain as it is.

Additional Comments

The idea behind Brightcrew seemed correct even if it had unintended consequences. There is a danger that allowing the regulation of any and all activities on the premises will mean Boards will stray into the areas that Brightcrew was designed to address. This relates again to s.27(7) and it could be made clearer as to what sorts of things Boards should not be looking at.

One LLF was recommending conditions about things like steam cleaning carpets to make premises more attractive to customers. This is too interventionist.

It should perhaps be linked to regulating activities within the operating plan, without straying into other regulatory regimes.

26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?

No

27. Do you agree that there should be additional restrictions on the operation of members' clubs?

Yes No

Policy Sub Group Comments

There should be additional regulation of members' clubs to stop abuses.

Additional Comments

Members' clubs hold a premises licence but benefit from many exemptions. Currently they are both able to benefit from exemptions and operate commercially. If they wish to operate commercially then they should not be able to claim exemptions.

Some clubs have chosen to go down that route. It is not clear as to how a club converts to a commercial operation. Different Boards operate this differently and the issue requires clarification – is it a minor variation, major variation or, in some cases, a completely new licence? Clarification of this may go some way to easing the problem.

An occasional licence suspends normal club rules about members and guests. The fact that clubs are allowed a certain number of occasional licences presumably means that operating within their entitlement is deemed to be not operating commercially. This also needs clarification.

28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence?

Yes No

The provisions are mandatory provisions within the club constitution IF the relevant club wishes to claim exemptions.

Alternatively incorporate the standard terms into licence conditions for any club wishing to claim exemptions and leave the clubs to deal with their own constitutions.

Either way it is maybe not the ideal solution as it would be somewhat of a blunt instrument. The problem is clubs acting commercially but claiming exemptions at the same time. Commercial activity is very difficult to regulate. Review would be on the grounds of breaching a condition on the licence. Any sanction would then be a punishment for the breach. Firstly the breach would have to be established. That means catching a club in the act of supplying alcohol to a guests where the guests is not signed in i.e. the sale is not recorded. That means going to a function, checking who is consuming alcohol and checking who is a member or guest to try and establish the facts. That may be disproportionate at a club function.

The proportionate sanction on a first offence might be a warning. The clubs would then have to be caught again within a reasonable time to warrant any further sanction.

The potential breach is easily avoided in the first place by means of holding an occasional licence or making attendees temporary members if the constitution allows for it.

Most constitutions do allow for temporary membership or for members to

sign in multiple guests. There is no way to determine whether a guest is accompanied by a member.

By a combination of clubs being allowed occasional licences and temporary members, even mandatory conditions or placing the constitution within the licence is unlikely to be curative of the problem.

The problem is commerciality.

29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?

Yes No

From the point of view of Boards, gathering and checking constitution information will require a considerable amount of effort. Clubs change their constitutions frequently. Clubs did provide their constitution originally to show an entitlement to exemptions but Boards have n power to demand the same.

Making a constitution part of the licence would perhaps be a disproportionate burden on Boards. It would not be clear as to whether Boards should only govern the mandatory licensing provisions or whether other parties (general licensed trade) would try and turn the Board into a general regulator of clubs by holding clubs to account for all constitutional provisions.

In times of economic hardship cross complaints as between premises are more common. Incorporating the constitution within the licence would maybe place an unnecessary regulatory burden on Boards.

It would perhaps be better to concentrate on the mandatory provisions and not only that but also the practical implications of drafting and how they could realistically be enforced to prevent commercial trading.

30. Do you have any other proposals to tighten up the regulation of members' clubs, for example through additional mandatory conditions?

Yes No

Policy Sub Group Comments

Add the mandatory parts of the constitution related to alcohol as mandatory conditions on a members' club licence instead.

Additional Comments

As above.

Perhaps the main difficulty is one of detection and enforcement. It is difficult because the problem is perceived to be one of commerciality. Pursuant to that Boards cannot and do not want to be responsible for collecting and analysing club accounts to check for an element of profit. There is no existing power to demand accounts and no definition of what counts as profit.

Most clubs run a bar in order to make a modest profit in order to continue the activities of the club. That is not acting in a commercial manner, which has to be at least clarified – perhaps it should be viewed as making a profit for distribution to members (like a dividend).

It is difficult to see how to enforce provisions that are designed to ensure that clubs do not make a profit – or that if they do make a profit then they should be considered to be commercial and not claim exemptions.

There could perhaps be the power for Boards to give notice to a club to say that the Board will consider the club to be operating on a commercial basis, and so not entitled to exemptions, unless the club can show otherwise.

However as measures these may not be proportionate.

31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?

Yes No

Licensing Boards are free to regulate their own procedures. This inevitably leads to different approaches across the country.

This does have a level of uncertainty for applicants. However, equally, it is less formal for applicants.

In other areas of law where rules for hearings are prescribed the whole process becomes too formal and not user friendly. For example in education exclusion or placing appeals the system is prescribed but it is certainly not user friendly for parents.

As an example, it was particularly set out in guidance that applicants need not use architect's drawings, as long as the layout plan is to scale. Many applicants drew their own plans. Others paid thousands of pounds for plans. If applicants should be able to apply for licences themselves then they must be able to represent themselves at hearings. This means the process must be conducted at a level that applicants can understand.

The Moray Board tries to make the whole process as user friendly as possible. Having rules of evidence and procedure will inevitably lead to the increased use of lawyers at hearings, much bigger time estimates for hearings and increased expense for applicants.

At most Boards could be given guidance on the principles of natural justice e.g. some practical matters on how to ensure the applicant gets a fair hearing and how to deal with evidence. Evidence is a particularly difficult area. Boards are often faced with submissions from parties, for example the police, which are untested and unsubstantiated. Board members often have no concept of how to decide what weight to attach and how to express such decisions. This could be introduced into the mandatory training for Board members.

32. Can you provide examples of particularly good or bad practice at Board hearings?

Yes No

The Moray Board is introducing a system of questionnaires for service users to elicit feedback on whether the experience of coming to a Board can be improved.

33. Should Board meetings be held in public, in their entirety?

Yes No

Policy Sub Group Comments

Boards should be free to hold pre meetings to understand the issues. This saves time for applicants. Boards must also have the freedom to deliberate in private.

Additional Comments

There is already an obligation to hold hearings in public in para 12(2) of Schedule 1. It is unclear as to whether this would remove the ability in para 12(3) for Boards to deliberate in public.

This has always been interpreted as subject to the general constraints of human rights issues i.e. where issues under discussion involve the human rights of a third party.

Any potential conflict with the provisions of the Human Rights Act and Local Government (S) Act – defining matters that are confidential – also needs to be clarified.

It is also unclear as to how far such a proposal would go. In many cases written materials containing potentially sensitive information are distributed solely to members. Should this information be available to the press and public?

In most instances around the country Boards hold pre-meetings to understand the papers and make decisions in an informed manner. This may be a hold over from 1976 Act procedures but saves time in actual meetings and so saves applicants time and cost. It is unclear as to whether pre-meetings should be in public as no decisions are made.

34. What other issues should be considered for inclusion in any guidance on Board procedures and why?

None

35. Should the Scottish Government introduce a national licensing policy statement and why?

Yes No

Policy Sub Group Comments

This will simply lead to the loss of the local slant, which is why Licensing Boards exist. An outline policy to build upon has not necessarily worked for

Single Outcome Agreements. The answer would depend on how far proposals go.

Additional Comments

None.

36. What sort of issues should such a statement cover?

No comments.

37. Should the licensing objective be amended to say “protect children and young people”?

Yes No

This should have always been the case.

38. Does the current mandatory condition in relation to Challenge 25 create difficulties?

Yes No

Policy Sub Group Comments

The Moray Board encourages licence holders to have a written policy.

Additional Comments

There is not currently a problem.

The requirement is to have a policy. There is no definition of what counts as a policy and that could be verbal instructions to staff.

Guidance and assistance could go further in this respect. Due diligence and written policies are difficult for smaller operators but are really essential.

Guidance on these would greatly assist operators and make the work of the LSO easier.

39. Do you agree that the duty as presently drafted is unworkable and why?

Yes No

No comments.

40. (a) Do you prefer the proposal that the duty should be amended to read that

‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....’

(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982

“whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

(c) Alternatively do you have any other suggestions?

No comments.

41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees?

Yes No

The premises manager should have day to day responsibility for the running of the premises. The premises manager will often be closer to employees than the licence holder.
Many licences are held by companies e.g. pubcos that will have little knowledge or control over what occurs on the premises day to day.

42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?

Yes No

Policy Sub Group Comments

Overprovision has not been an issue in Moray.

Additional Comments

Developing a policy on overprovision has proved to be very difficult. One of the major flaws in the system is the lack of evidence to support a conclusion, or the lack of evidence that can be directly related to the issue. Expanding the locality to potentially include the entire Board area may make it easier to take account of statistics. However evidential links will remain a problem.

43. Would this make it easier for Boards to assess overprovision?

Yes No

As above.

44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?

Yes No

There is no need for this amendment. The section already requires the Board to have regard to the number and capacity of premises. Capacity requires definition and can then be calculated within overprovision policies.

45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?

Yes No

Policy Sub Group Comments

This would be impossible to enforce.

Additional Comments

None

46. If this were introduced, would it be possible for the police and local authorities be able to carry out meaningful compliance and enforcement action?

Yes No

As above

47. Should all garages be refused a premises licence?

Yes No

Policy Sub Group Comments

The current system has proved unworkable because of the difficulties in defining what premises might be suitable. It would be a much simpler system to prevent or allow licences for all garages. If the idea is to discourage drink driving then that is not perceived to be a problem. Moray has a lot of rural areas where such shops are important so a garage should be able to apply for a licence like any other premises.

Additional Comments

None

48. What, if any exemptions should apply?

N/A

49. Can you suggest an alternative approach which would address concerns?

N/A

50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the Local Government elections?

Yes No

Policy Sub Group Comments

In Moray training for members was arranged and undertaken in good time and applicants were not delayed or prejudiced.

Additional Comments

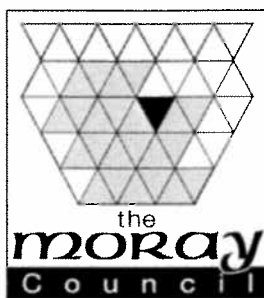
None

51. If so, what would be your preferred approach to address this issue of alcohol licensing?

No comments.

52. Do you have further suggestions for reform?

None.



REPORT TO: THE MORAY LICENSING BOARD ON 7 MARCH 2013

SUBJECT: A CONSULTATION PAPER ON PROPOSED CHANGES TO IMPLEMENTING LEGISLATION FOR THE EU SERVICE DIRECTIVE TO ALLOW FOR NATIONAL APPLICABILITY OF LICENCES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The reason for this report is to:

1.1.1 Inform the Board of the current consultation from BIS, the Department for Business Innovation and Skills, on proposed changes to the implementing legislation for the EU Services Directive to allow for the national applicability of certain licences within the UK; and

1.1.2 Provide any comments to BIS before conclusion of the consultation on the 8th March 2013.

2. RECOMMENDATIONS

2.1 **It is recommended that the Board note the publication of a consultation paper by BIS, as above, provide any comments and instruct the Clerk to respond to the consultation, including any comments from the Clerk, before the 8th March 2013 deadline.**

3. BACKGROUND

3.1 Members will note that the consultation concerns the proposed national applicability of personal licences i.e. cross border mutual recognition of licences that are personal in nature within the UK. This is expected to be in relation to personal licence holders under the Licensing (Scotland) Act 2005 only. Gambling is outside the scope of the EU Services Directive.

3.2 A copy of the consultation document has been circulated to members previously by email. The consultation has only recently been received and it has not been possible to review the same and provide a draft response for

consideration in time for producing this report. If possible a draft response will be tabled at the meeting.

- 3.3 Members are asked to provide views on the proposals, as a Board, so that the Clerk can put those views to BIS. The most relevant consultation question appears to be question 5, whether it would be inappropriate to provide for national applicability of any particular licences and why?
- 3.4 Members are also asked to note that the Clerk will also provide comments in response to the consultation.

4. **SUMMARY OF IMPLICATIONS**

- (a) **Council/Community Planning Priorities**
No specific implications.
- (b) **Policy and Legal**
Any implications have been outlined above.
- (c) **Financial implications**
The financial implications of these proposals are not clear at this time. If implemented, there may be financial consequences in terms of increased workload and cost e.g. to provide data for a national database of licences.
- (d) **Risk Implications**
None specific to the consultation. Concerns about the proposal include matters that are risk related, for example, how a competent authority would know who is operating legitimately in their area where there is no national database of licences.
- (e) **Staffing Implications**
As with financial implications.
- (f) **Property**
None.
- (g) **Equalities**
BIS has included an impact assessment for the proposals with the consultation. No issues separately identified.
- (h) **Consultations**
This is a response to a consultation. Copies of the consultation have been widely circulated by BIS.

5. CONCLUSION

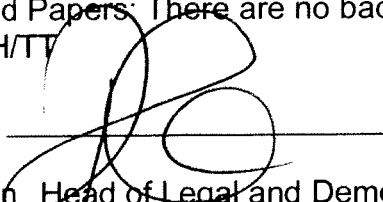
5.1 That the Board considers the recommendations set out in paragraph 2 of the report.

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

Background Papers: There are no background papers

Ref: SAH/TT

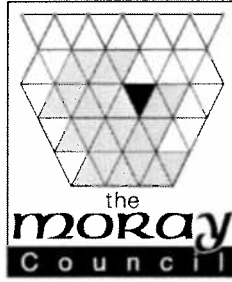
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26/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn



REPORT TO: THE MORAY LICENSING BOARD 7 MARCH 2013

SUBJECT: PUBLIC SECTOR EQUALITY DUTIES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Board is asked to approve the draft equality outcomes and agree to publication of the same.

2. RECOMMENDATION

2.1 It is recommended that:

2.1.1 The Board

- (i) note the current draft outcomes for 2013-2017 attached at Appendix I;**
- (ii) delegate authority to the Clerk in discussion with the Board Convener and Equalities Officer to make any amendments to the draft outcomes necessary due to EHRC guidance and Corporate amendments or to clarify the respective roles of the Council and the Board;**
- (iii) note that the draft outcomes have yet to be approved by the Council at its meeting on 27th March 2013;**
- (iv) Authorise the Clerk to publish the final outcomes for 2013-2017 with any necessary amendment as soon as possible and in any event prior to the end of April.**

3. BACKGROUND

3.1 The Equality Act 2010 makes the public bodies listed, including Councils and Licensing Boards, subject to public sector equality duties.

3.2 The last report to the Board on the equalities duties was for the meeting on the 17th January 2013. The duties (as headings) and progress towards the same were set out in detail. The Board agreed (para 9 of the minute refers) to join in with the Council in developing and publishing equality outcomes around the themes of bullying and harassment of vulnerable people and domestic abuse.

- 3.3 Since that time equality outcomes have been drafted by the Council's Equalities Officer, in concert with relevant parties, including the Depute Clerk. A copy of the draft outcomes are attached at **Appendix I** together with additional information.
- 3.4 Equality outcomes must be supported by evidence and examining the evidence available both nationally and locally has been time consuming. Drafting is an ongoing process as the outcomes need not be published until the end of April 2013 and the Equalities & Human Rights Commission is frequently issuing further guidance around issues that arise.
- 3.5 As such the draft outcomes may be subject to further minor amendments, particularly to reflect the relative roles of the Council and the Board. As the outcomes themselves are over-arching objectives, the difference may be more apparent in the action items. The action items have yet to be drafted, as they are not required to be published in April, and will be the subject of further update in due course.
- 3.6 Subject to approval from the Council, it is expected that equality outcomes will be published on time.

4. SUMMARY OF IMPLICATIONS

- (a) **Council/Community Planning Priorities**
The proposed Equality Outcomes complement the priorities set out in the SOA.
- (b) **Policy and Legal**
The proposals will assist in meeting the public sector duties under the Equality Act 2010.
- (c) **Financial implications**
There are no financial implications arising from this report.
- (d) **Risk Implications**
There is a risk that if equality outcomes are not published on time then the matter will be reviewed by the Equalities and Human Rights Commission in May 2013 with a view to compliance action.
- (e) **Staffing Implications**
The public sector equality duties have the potential of impacting on staff. Every effort is made to ensure that the principles of proportionality and relevance are applied to equality issues.
- (f) **Property**
There are no implications on property arising from this report.

(g) Equalities

The recommendations will assist in meeting our obligations under the Equality Act 2010 and the Scottish regulations in relation to the public sector equality duties.

(h) Consultations

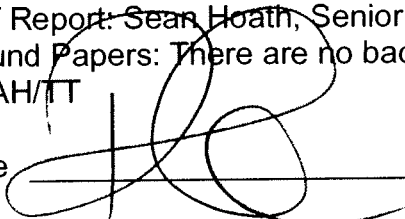
Consultations have taken place with the Moray Equalities Forum, the Scottish Council Equalities Network, the Equality and Diversity Corporate Advisory Forum, NHS Health Improvement Officer for Schools, Adult Protection Services, Community Wardens.

5. CONCLUSION

5.1 The Board is asked to consider and note progress towards the public sector equality duties and to approve the recommendations set out in section 2.

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

Signature



27/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board
Name Rhona Gunn

APPENDIX I**Moray Council Equality Outcomes 2013 - 2017****THEME 1: Bullying****National evidence**

- Evidence from EHRC report: 'Hidden in Plain Sight', which discussed the results of its inquiry into disability related harassment were published:
 - The inquiry highlighted a range of systemic failures, including a culture of disbelief around incident reporting, insufficient co-ordination of incident reporting which would allow identification of repeat incidents or escalating incidents and an acceptance by victims of bullying and harassment as part of life.
 - There are a high number of unreported incidents.
 - The approved form may not capture sufficient information to safeguard the victim e.g. there is no space to indicate whether the incident is a repeat incident, nor does it allow identification of risk factors.
 - Follow up procedures are not robust enough. Some of the areas that need to be looked at more closely are: co-ordination between agencies; better analysis of report findings; are there different systems capturing similar incidents that work separately; are relevant front-line staff sufficiently aware of the need to record incidents, warning signs and procedures that ensure a more co-ordinated approach?
 - Where incidents are reported, there is no procedure for ensuring that the information is fed into a more comprehensive system for co-ordinating and analysing the information in order to identify repeat incidents or escalation.
- Evidence from EHRC's report: 'How Fair is Britain?':
 - LGBT adults are around twice as likely to report experiencing unfair treatment, discrimination, bullying or harassment at work as other employees.
 - Bullying, discrimination and language barriers are identified as issues facing ethnic minority pupils in school.
 - Gypsies and travellers are more liable than other groups to face hostilities and experience poor mental health.
 - The number of racially motivated crimes reported to the police has risen in Scotland as has the number of cases resulting in court proceedings.
 - Homophobic bullying is widespread in British secondary schools.
 - LGBT are more liable than other groups to face hostilities and experience poor mental health.
 - Small scale studies suggest higher suicide rates among LGBT groups.
 - In Scotland, 17% of disabled people are victims of crime.
 - In Scotland, 47% of disabled people have experienced hate crime as a result of their disability.
 - People who are not Christian are roughly 10 times more likely to report being attacked or harassed because of their faith than Christian people.
 - Among transgender people a large proportion of victims of hate crime are still reluctant to report such attacks.

Local evidence

- In March 2011 Grampian Racial Equality Council (GREC) published the results of a study commissioned by the Moray Council on equality issues in Moray. One of the findings suggested that the extent of bullying in schools is larger than our reporting systems indicate. Groups that are particularly affected are people with learning disabilities, Through Care and After Care young people and LGBT people.
- The Safer Communities Survey 2009 received 621 (60%) returns from the Moray Citizens' Panel. In the survey:
 - 23% reported having experienced deliberate damage to property or a threat of damage to property.
 - 11% experienced violence or a threat of violence.
 - 7% experienced racial harassment or intimidation.
 - 13% experienced other harassment or intimidation.
 - The survey doesn't give any figures for disability related harassment but mirrors the figures from the EHRC inquiry. The Safer Communities Survey also states that 65% don't report crime or community safety problems. Again, this mirrors national figures: according to the statistical bulletin, 37% of crimes in Scotland come to the attention of the police.
- Results from the Citizens' Panel Single Outcome Agreement Priorities survey (November 2012) provide the following information relating to adult protection:
 - Around 2 in 5 respondents indicated that they and/or a member of their family had been subjected to bullying or harassment.
 - Around 1 in 5 of those who had (or whose family member had) experienced bullying or harassment indicated that they had not spoken to anyone about this. In terms of those that had spoken to someone about the issue, this was most commonly parents or family, and teachers. This may suggest that a large proportion of these incidents involved bullying or harassment of children.
- At meetings on 10 September and 5 October 2012 the Moray Equalities Forum agreed that bullying should be one of the main themes for the Moray Council's equality outcomes.

Other evidence

- A new study by the University of Cincinnati found that both school bullies and their victims are likely to abuse alcohol after a bullying episode. The study examined bullying, recent alcohol use and heavy drinking episodes among more than 54,000 7th-through-12th grade students in schools across Greater Cincinnati, including the Tristate regions of Ohio, Kentucky and Indiana. The data was collected by the Coalition for a Drug Free Greater Cincinnati as part of the 2009-2010 Pride Survey on adolescent drug use in America.
 - The study found that junior high and high school students were one-and-a-half times more likely to have abused alcohol if they had been bullied. "The overall effect of victimization and alcohol use did not differ based on sex, age or race. It has an overall impact on their drinking rates and level of intoxication across all categories. Also, bullies and their victims are reporting similar types of activity in relation to their drinking patterns. We

believe the alcohol abuse may often be an effort to escape problems and to self-medicate".

Equality Outcomes

1. Through 2013 and 2014 it is expected that the number of reported incidences of bullying for all protected characteristics will increase through better awareness and reporting mechanisms. The baseline figures will relate to all incidences and will enable us to identify repeat incidences and escalating incidences.
2. By April 2014 onwards a baseline figure for the number of incidences for all protected characteristics will be established.
3. From April 2014 the number of repeat incidences of bullying related to protected characteristics will decrease.
4. From April 2014 the number of escalating incidences of bullying related to protected characteristics will decrease.
5. From April 2014 the overall number of incidences of bullying related to protected characteristics will decrease.
6. From April 2013 onwards victims of bullying will be supported in developing better ways of dealing with bullying behaviour.
7. From April 2013 onwards people who display bullying behaviour will be supported in addressing their own bullying behaviour.

Protected characteristics

The outcomes will apply to all characteristics protected under the Equality Act 2010.

THEME 2: Domestic Abuse

National evidence

- 'How Fair is Britain?':
 - Partner violence accounts for 43% of female homicides compared to 7% for men.
 - 1 in 7 women in Scotland have experienced a physical form of partner abuse since reaching the age of 16.
 - Women experience over three-quarters of domestic violence and sexual assault and encounter more extreme forms than do men.
 - Data suggests that LGB are more likely than average to have experienced sexual assault and domestic violence during their lifetimes.

Local evidence

- Moray Safer and Stronger Strategic Assessment 2009/10:
 - The numbers of incidents and repeat incidents of domestic abuse have reduced between 2006/07 and 2008/09, by 18% and 17% respectively. The proportion of incidents that were repeat incidents has remained steady over this period.
 - The vast majority of victims are female, though there has been a slight reduction since 2006/07, from about 90% to about 86%. The vast majority of perpetrators are male, accounting for virtually the same proportions as female victims, with a similar reduction since 2006/07. The picture is the same nationally. Approximately 84% of victims of both genders are aged

20-50yrs, although the spread within this range is slightly different, with males being split fairly evenly between 20-30yrs, 31-40 yrs and 41- 50 yrs, whereas the majority of females fall within the younger of these two age groups.

- Nationally, around 88% of victims and perpetrators fall into these three age groups, the difference being that Moray has a slightly higher proportion of victims and perpetrators aged under 19yrs.
- Children 1st, Cedar Project:
 - In 2011 there were over 500 reported incidences of domestic abuse in Moray.
- Moray Domestic Abuse Strategy 2011/14:
 - Overall figures need to be seen against the background of inherent underreporting. It is estimated that a victim will only summon up the courage to call the Police on average after seven incidents of abuse.
 - During 2010, across the four Children and Families Teams covering Moray, a total of 2100 referrals or initial contacts were made; in 224 of these, 10.67% of the total, Domestic Violence was recorded as the presenting issue.
 - Approximately 90% of the victims of Domestic Violence reported to Grampian Police were female.
 - Of the incidences reported to Grampian Police in Moray during the financial year 2008/09, 60% of the perpetrators were under the influence of alcohol and 40% of victims at the time of the offence.
 - In a large number of cases substantial emotional and physiological damage is done to the victim's children who are often present when the abuse takes place. This has long-term effects which can perpetuate the cycle of violence.
- Moray Women's Aid:
 - There is insufficient access to interpretation services for victims whose first language isn't English.
 - Victims who have special needs often face delays in having their needs assessed, leading to delays in finding suitable accommodation.

Data gaps

- There is little information about the incidence of domestic abuse among:
 - Minority ethnic groups
 - LGBT community

Equality Outcomes

1. Gain a better understanding of the number of incidences of domestic violence disaggregated by protected characteristic.
2. Gain a better understanding of the number of repeat incidences and escalating incidences as part of the total number of incidences.
3. Raise awareness of incidences of domestic abuse and reporting mechanism among front-line officers who are not currently engaged in tackling domestic violence and the public.

4. Reduce the overall number of incidences of domestic violence.
5. Reduce the number of escalating incidences of domestic violence.
6. Reduce the number of repeat incidences of domestic violence.
7. Victims whose first language is not English will have better access to interpretation services when seeking help.
8. Victims who have special needs will have quicker access to an assessment by an occupational therapist.

Public Sector Duties

The outcomes relating to domestic violence will help in meeting duties regarding:

- The need to eliminate discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010.
- The need to promote equality of opportunity.

Protected characteristics

The outcomes relate to the following protected characteristics:

- Sex
- Race
- Sexual orientation
- Gender reassignment
- Age
- Pregnancy and maternity

THEME 3: Accessible streets in Moray

National evidence

- Equality Evidence Finder: <http://www.scotland.gov.uk/Topics/People/Equality/Equalities/>
 - Per cent of the adult population have a long-standing illness, health problem or disability that means they find walking for at least 10 minutes difficult to manage on their own.
 - 1.6 per cent of the adult population have a long-standing illness, health problem or disability that means they find using a car difficult to manage on their own.
 - 4.7 per cent of the adult population have a long-standing illness, health problem or disability that means they find using a bus difficult to manage on their own.
 - 3.6 per cent of the adult population have a long-standing illness, health problem or disability that means they find using a train difficult to manage on their own.

Local evidence

- Safer Communities Survey 2009:
 - Perception of safety: people generally feel safe about their own neighbourhood but less so when moving further away.
 - Perception of safety is affected by under-age drinking: 35% indicating this is a problem for local people at least once a week) and by public drinking/drunkenness (27%).
 - As was found in 2006, there was a clear trend in responses with views generally being most positive about the local area and least positive at the national level. In relation to crime the following points emerge:

- 28% of respondents felt that crime levels had increased in their local area, significantly more than the 8% who felt crime had decreased.
 - 48% felt that crime had increased across Moray as a whole, with just 4% indicating a decrease.
 - Views on crime were most pessimistic for Scotland as a whole – 61% felt that crime had increased nationally and just 3% felt there had been a decrease.
 - Results do suggest that the time of day is the most significant factor in how safe respondents feel in their local area. Very few felt unsafe walking alone or taking public transport during the day (just 3% for each).
 - However respondents were significantly more likely to feel unsafe in these situations at night, with around a fifth of respondents indicating that they would not feel safe walking alone (20%) or on public transport (21%) at night.
 - The profile of safety measures taken recently by respondents was broadly similar to that reported in 2006. In particular, respondents were most likely to have avoided certain places (53%), avoided going out alone at night (44%) and improved their home security (40%). The relative ranking of these three measures has changed since 2006, and in particular somewhat fewer respondents mentioned improving home security, but there has been little significant change.
 - There is no information on how perception of community safety affects the different protected characteristics.
- Feedback from Moray Disability Forum:
 - The Forum has given many examples of physical features in Moray which make it difficult or impossible to effectively use a great number of footpaths in Moray. These features range from temporary features (such as cars parked on kerbs, wheelie bins, a-frame signs, or other temporary obstacles blocking the pavement) to more permanent obstacles (such as dropped kerbs that are too high, narrow pavements, pavements made too narrow by drainpipes, lampposts, steep gradients, unsecure embankments, insufficient or non-compliant disabled parking spaces, cobbled streets). These features affect wheelchair users, people who are visually impaired, elderly and parents with young children. In some extreme cases, these obstacles are impossible to negotiate without a significant detour, e.g. the platforms at Elgin railway station.
 - Pavements are the basic unit of mobility within our overall system of transportation.

Equality outcomes

1. Work with community groups to carry out street audits to gain insight into the physical and psychological barriers that prevent pedestrians or wheelchair users from using the pavements in Moray.
2. Improve access to streets for all users in Moray.

3. People feel safe using the streets in Moray.
4. Provide easily accessible information about safety and accessibility of the streets in Moray.

Protected characteristics

- Age
- Disability
- Pregnancy and maternity

Additional Information Equality Outcomes

The Equality and Human Rights Commission has stipulated that each authority has to publish its own equality outcomes. This means that The Moray Council, The Moray Council Education and Social Care Services and the Licensing Board have to be clearly distinguishable with regards to each of its outcomes.

Because a conscious decision has been made in Moray to adopt an integrated approach to the equality outcomes it is proposed that the outcomes for the three authorities will be published jointly. In order to make each distinguishable, the outcomes for each of the themes will be published in three sections:

- One section listing the outcomes for the Moray Council
- One section listing the outcomes for the Education Authority
- One section listing the outcomes for the Licensing Board.

It is recognised that in terms of the outcomes there will be an element of repetition, especially as the outcomes are formulated at a high strategic level. When it comes to implementing the outcomes, there will be a clearer separation between the three, expressed in actions.

Theme 1: bullying

The outcomes for this section are (responsible authorities in bold):

1. Through 2013 and 2014 it is expected that the number of reported incidences of bullying for all protected characteristics will increase through better awareness and reporting mechanisms. The baseline figures will relate to all incidences and will enable us to identify repeat incidences and escalating incidences. **All three authorities. Licensing Board to contribute by linking incidences of underage drinking to bullying behaviour and feeding these into the overall reporting system**
2. By April 2014 onwards a baseline figure for the number of incidences for all protected characteristics will be established. **The Moray Council**
3. From April 2014 the number of repeat incidences of bullying related to protected characteristics will decrease. **All three authorities will contribute to this**
4. From April 2014 the number of escalating incidences of bullying related to protected characteristics will decrease. **All three authorities will contribute to this**
5. From April 2014 the overall number of incidences of bullying related to protected characteristics will decrease. **All three authorities will contribute to this**
6. From April 2013 onwards victims of bullying will be supported in developing better ways of dealing with bullying behaviour. **All three authorities will contribute to this**

7. From April 2013 onwards people who display bullying behaviour will be supported in addressing their own bullying behaviour. **All three authorities will contribute to this**

Theme 2: domestic abuse

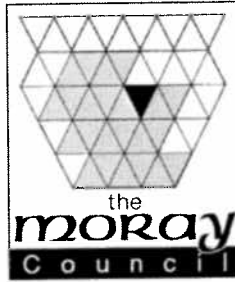
The outcomes for this section are (responsible authorities in bold):

1. Gain a better understanding of the number of incidences of domestic violence disaggregated by protected characteristic. **All three authorities will contribute to this. Licensing Board to provide information about the link between alcohol and domestic abuse in Moray. Education will follow up on evidence of children suffering from the effects of domestic abuse.**
8. Gain a better understanding of the number of repeat incidences and escalating incidences as part of the total number of incidences. **All three authorities will contribute to this as above**
9. Raise awareness of incidences of domestic abuse and reporting mechanism among front-line officers who are not currently engaged in tackling domestic violence and the public. **All three authorities will contribute to this by encouraging uptake of GIRFEC and Vulnerable Adult training**
10. Reduce the overall number of incidences of domestic violence. **All three authorities will contribute to this**
11. Reduce the number of escalating incidences of domestic violence. **All three authorities will contribute to this**
12. Reduce the number of repeat incidences of domestic violence. **All three authorities will contribute to this**
2. Victims whose first language is not English will have better access to interpretation services when seeking help. **The Moray Council**
3. Victims who have special needs will have quicker access to an assessment by an occupational therapist. **The Moray Council.**

Theme 3: Access to streets

The outcomes for this section are (responsible authorities in bold):

1. Work with community groups to carry out street audits to gain insight into the physical and psychological barriers that prevent pedestrians or wheelchair users from using the pavements in Moray. **The Moray Council**
2. Improve access to streets for all users in Moray. **The Moray Council**
3. People feel safe using the streets in Moray. **The Moray Council and Licensing Board**
4. Provide easily accessible information about safety and accessibility of the streets in Moray. **The Moray Council**



REPORT TO: THE MORAY LICENSING BOARD 7 MARCH 2013

SUBJECT: DUTY TO PREPARE A RECORDS MANAGEMENT PLAN UNDER THE PUBLIC RECORDS (SCOTLAND) ACT 2011

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 The Board is asked to:

1.1.1 Note the requirements of the Public Records (Scotland) Act 2011 (the Act) to prepare a records management plan (RMP), setting out the arrangements for the management of the Board records, and to submit the plan to the Keeper of the Registers of Scotland for approval.

1.1.2 Agree to join in with the Council in preparing a joint records management plan.

2. RECOMMENDATION

2.1 It is recommended that the Board:

2.1.1 agree to join with the Council in developing, publishing and implementing a records management plan to comply with the Board's duty as a named authority under the Act.

2.1.2 instruct the Depute Clerk to liaise with the Council's Records Manager to develop the records management plan across both the Council and the Licensing Board and report back on progress at a subsequent meeting of the Board.

3. BACKGROUND

3.1 The Public Records (Scotland) Act 2011 makes the public bodies listed, including Councils and Licensing Boards, subject to a duty to prepare a records management plan, setting out the arrangements for the management of records, and to submit the plan to the Keeper of the Registers of Scotland for approval.

3.2 The keeper has indicated an intention to operate a rolling programme of invitations to submit plans for approval. The keeper intends to give authorities several months' notice of formal invitation. No notice has yet been received but indications are that the plan should be ready for submission by November 2013.

- 3.3 The Council's Records Manager is due to start work on preparing a plan for the Council.
- 3.4 On questioning the Keeper, the Depute Clerk has been advised that:
"As Licensing Boards are individually named under the schedule to the Act they can, of course, submit a plan separately, but we fully expect local authorities to include these bodies within their RMP. The Act allows for this under section 1(9) and the Keeper regards this as a way of preventing duplication and of minimising burdens. In fact, any body separately listed but which is performing a function of the Council, including Licensing Boards and Joint Boards, can be accommodated under the Council's RMP and the Keeper will be advocating this".
- 3.5 In view of the keeper's comments it would appear prudent for the Licensing Board to join in with the Council's RMP. The Depute Clerk will remain in contact with the Council's Records Manager to incorporate the Licensing Board into the plan.
- 3.6 Following discussions the policy sub group is in agreement with the recommendations in this report.
- 3.7 The Clerk will update and seek further approval as necessary from the Board with regard to the actions of the Council in due course.
- 3.8 Subject to approval from the Council, and from the Board to join with the Council, it is expected that the RMP will be published on time.

4. SUMMARY OF IMPLICATIONS

- (a) **Council/Community Planning Priorities**
No specific implications.
- (b) **Policy and Legal**
The proposals will assist in meeting the duties under the Public Records (Scotland) Act 2011.
- (c) **Financial implications**
There are no specific financial implications arising from this report. Financial impact in terms of staff time will be minimised by joining in with the Council's RMP.
- (d) **Risk Implications**
There is a risk that if the RMC is not published on time then the matter will be reviewed by the Keeper of the Registers of Scotland with a view to compliance action.

(e) **Staffing Implications**

As with financial implications. It is anticipated that requirements can be met within current resources.

(f) **Property**

There are no implications on property arising from this report.

(g) **Equalities**

No implications.

(h) **Consultations**

Consultation is not required.

5. **CONCLUSION**

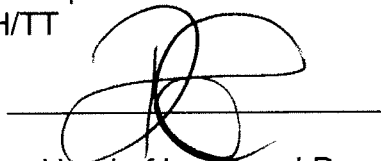
- 5.1 **The Board is asked to consider and note the duty to prepare a records management plan and to approve the recommendations set out in section 2.**

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

Background Papers: There are no background papers

Ref: SAH/TT

Signature



26/2/13

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn