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## THE MORAY LICENSING BOARD

**THURSDAY 21 AUGUST 2014**

**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 21 August 2014 at 10.00am.

Margaret Forrest  
DEPUTE CLERK

13 August 2014

### **BUSINESS**

1. Prior Minutes
  - (i) Minutes of the Meeting held on 19 June 2014 (copy attached)
  - (ii) Minutes of the Special Meeting held on 13 August 2014 (copy attached)

### **The Licencing (Scotland) Act 2005**

2. Applications Section– Appendix 1
3. Licensing (Scotland) Act 2005 – Review of Premises Licences Hearing Following the Making of Premises Licence Review Proposal – Report by the Clerk (copy attached)
4. The Scheme of Delegation – Report by the Clerk (copy attached)
5. Appointment of Depute Clerks – 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 COWIE****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 1**

# MORAY LICENSING BOARD

MEETING, 21 August 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date Received	Comments
Transfer (Other Party)	The Cooperage 178 High Street Elgin IV30 1BA	Hogshead Pub Company LIC Limited	12 June 2014	Police objection
New Premises	Victoria Park South Pringle Street Buckie Moray AB56 1BJ	Buckie Thistle Football Club	29 May 2014	New premises licence. No objs/refs Awaiting S50 certs Site visited Applicant cited to attend
Review	Victoria Park Function Hall Victoria Park Buckie AB56 1BG	Buckie Thistle Football Club	7 August 2014	Must review current licence on hearing previous application

# MORAY LICENSING BOARD

MEETING, 21 August 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Variation (Major)	Co-operative Group Limited Coulardbank Road Lossiemouth IV31 6ED	Co-operative Group Food Limited	8 July 2014	Change to layout including increase to capacity. No objs/rep Applicant not cited
Variation (Major)	Grand Central 3 West Church Street Buckie AB56 1BN	James John Cameron	14 July 2014	Change core hours to Mon – Thu 11:00 - 00:00 Fri & Sat 11:00 – 01:00 and Sun 12:30 – 00:00 from existing Mon – Wed 18:00 – 23:00, Thu 18:00 – 23:45, Fri 14:00 – 01:00, Sat 11:00 – 01:00, Sun 12:30 – 23:45. To add off sales, access for 0-18 yrs, live music and gaming. Reps received Recently site visited Applicant cited to attend
Variation (Major)	Zed Bar Joannas Downtown USA Moray Playhouse 195-199 High Street Elgin IV30 1DJ	CS2010 Limited	14 July 2014	To vary core hours on Mon & Tue 11:00 – 01:00, from existing 11:00 – 23:00 No objs/rep Applicant cited to attend

## MORAY LICENSING BOARD

MEETING, 21 August 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

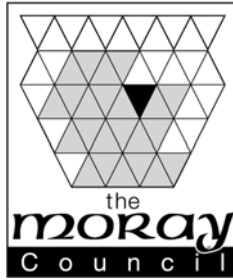
Variation (Major)	Brodie Countryfare Brodie By Forres IV36 2TD	Brodie Countryfare Ltd	11 June 2014	To increase licensed area, to change Sun core hours to 10:00 – 17:45 off sales, 11:00 – 17:30 on sales. No objs/rep Applicant cited to attend
Variation (Major)	The Muckle Cross 34 High Street Elgin IV30 1BU	J D Wetherspoon (Scot) Limited	12 June 2014	To change access for children and young persons until 21:00 instead of 20:00 on Sun to Thu. Maintain 20:00 on Fri & Sat No objs/rep Applicant cited to attend
Variation (Major)	Christies of Fochabers Garden Centre Restaurant The Nurseries Fochabers IV32 7PF	Christies (Fochabers) Ltd	23 June 2014	To extend licensed restaurant area by 36 covers. No objs/rep Applicant not cited to attend

## MORAY LICENSING BOARD

MEETING, 21 August 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Variation (Major)	Caberfeidh Main Street New Elgin Elgin IV30 6BH	Hawthorn Leisure Limited	1 August 2014	To add bar meals as an activity and allow C&YP access for meal or attending function. No objs/rep Site visited Applicant cited to attend
Variation (Major)	Kirkie Bar 50 Main Street New Elgin Elgin IV30 6BH	Michael Alexander Taylor	24 July 2014	To add additional beer garden, allow access to C&YP and to change core hours Sun 11:00 – 23:00 & Thu 11:00 – 00:30, from existing Sun 12:30 – 23:00 & Thu 11:00 – 23:00 Rep received Site visited Applicant cited to attend



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**REPORT TO: THE MORAY LICENSING BOARD 21 AUGUST 2014**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 - REVIEW OF PREMISES LICENCES HEARING FOLLOWING THE MAKING OF PREMISES LICENCE REVIEW PROPOSAL**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 To ask the Board to review the licenses in relation to the Crooked Inn which was suspended by the Board following a hearing on 16 January 2014.

**2. RECOMMENDATION**

- 2.1 **It is recommended that the Board consider and determine the premises licence review proposal having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005 as set out in paragraph 3.7 below.**

**3. BACKGROUND**

- 3.1 On the 16 January 2014 review proposals were made under powers delegated by the Board to the Clerk in respect of premises that had failed to pay the annual licence fee that fell due on the 1 October 2013. The review proposals stated the grounds for review in accordance with section 36(3) of the Act, which are (a) that one or more of the conditions to which the premises licence is subject has been breached, or (b) any other ground relevant to one or more of the licensing objectives.
- 3.2 A review proposal having been made, the Board was obliged to hold a hearing, in terms of s.38(1), to consider and determine the proposal.
- 3.3 In the present case, on 16 January 2014 (paragraph 3 of the minute refers) the Board found grounds for review were established in respect of the aforementioned premises both in terms of s.36(3) (a) and (b) of the Act.
- 3.3.1 By the failure to pay the annual licence fees which became due on 1 October 2013, the licence holders concerned were breaching a mandatory condition of the premises licence, which condition is imposed by paragraph 10(2) of Schedule 3 of the Act.
- 3.3.1 In addition, by the failure to pay the annual licence fees, the licence holders concerned had deprived the Board of revenue and this reduced the Board's ability to promote the licensing objectives.



- 3.4 As a result The Board considered it necessary or appropriate for the purposes of the licensing objectives to suspend the licence for a period of six months and review the position at today's meeting if the annual fee was still outstanding. The annual fee remains outstanding.
- 3.5 According to the last information available, the premises may currently be for sale at the hands of Insolvency Practitioners.
- 3.6 At the review hearing if satisfied that a ground for review is established take such of the steps set out in section 39(2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives. Section 39(2) confers on the Board the power to:
- 3.6.1 Issue a written warning;
  - 3.6.2 Vary the licence;
  - 3.6.3 Suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
  - 3.6.4 Revoke the licence.

#### **4 SUMMARY OF IMPLICATIONS**

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

The Moray Licensing Board exercises statutory functions under various Acts including the Licensing (Scotland) Act 2005 and the Gambling Act 2005, which includes promoting licensing objectives such as :

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

The objectives of licensing regimes closely reflect some of the priorities within the Moray 2023 plan in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community. Provision for appropriate staff and support will assist the Board in this.

**(b) Policy and Legal**

The legal implications have been explained above.

**(c) Financial implications**

Loss of unpaid fees.

**(d) Risk Implications**

None.

- (e) Staffing Implications**  
Additional work is required in pursuing unpaid annual fees.
- (f) Property**  
None.
- (g) Equalities**  
None.
- (h) Consultations**  
None required.

## **5 CONCLUSION**

**It is recommended that the Board consider and determine the premises licence review proposal in respect of the premises detailed in this report having regard to the powers available to the Board under s39(2) of the Licensing (Scotland) Act 2005.**

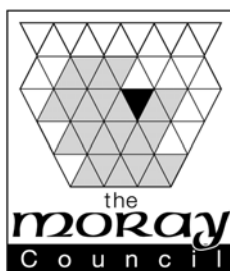
Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board  
Background Papers: There are no background papers  
Ref: SAH/TT

Signature

Date 13 August 2014

Designation: Legal Services Manager (Litigation & Licensing), Depute Clerk to the Board

Name: Margaret Forrest



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**REPORT TO: MORAY LICENSING BOARD 21 AUGUST 2014**

**SUBJECT: THE SCHEME OF DELEGATION**

**BY: CLERK TO THE BOARD**

**1. Reason for Report**

- 1.1 The reason for this report is to invite the Board to approve an amended Scheme of Delegation for the Licensing (Scotland) Act 2005.

**2. Recommendations**

- 2.1. **It is recommended that the Board approve the Scheme of Delegation as outlined in Appendix I of this report.**

**3. Background**

- 3.1 The Scheme of Delegation was last approved on 9 August 2012 (para 3 of the minute refers).

**4. Proposals**

- 4.1 The functions proposed for delegation are all more fully set out in **Appendix 1**.
- 4.2 The one suggested change since approval of the last scheme is highlighted for ease of reference.
- 4.3 The amendment is to provide for the Clerk or person appointed to assist the Clerk to revoke a personal licence under the mandatory provision in section 87(3) of the Licensing (Scotland) Act 2005, if the licence holder fails to comply with the provisions as regards training in section 87(1) of that Act. Revocation of personal licences in these circumstances is mandatory but in the absence of a delegated power for this purpose all such matters would have to be listed for a Board meeting.
- 4.4 The previously agreed Scheme of Delegation will be superseded by the Scheme of Delegation proposed in this report.

## 5. **Implications**

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

The Moray Licensing Board exercises statutory functions under various Acts including the Licensing (Scotland) Act 2005 and the Gambling Act 2005, which includes promoting licensing objectives such as :

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The objectives of licensing regimes closely reflect some of the priorities within the Moray 2023 plan in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

### (b) **Policy and Legal**

Delegation of functions is provided for within paragraph 10 of Schedule 1 to the Licensing (Scotland) Act 2005 as further detailed within **Appendix I** to this report.

### (c) **Financial Implications**

In the absence of an effective Scheme of Delegation the administration of the licensing system and the associated cost will increase.

### (d) **Risk Implications**

The risk of not having a quick and efficient Scheme of Delegation in place is that the process will be delayed and administration and costs of processing will be increased as above.

### (e) **Staffing Implications**

It is anticipated that an efficient Scheme of Delegation will save staff time and resources.

### (f) **Property**

None.

### (g) **Equalities**

None.

**(h) Consultations**

None.

**6. Conclusion**

**6.1 The Board is being asked to approve an updated scheme of delegation for it's functions under the Licensing (Scotland) Act 2005.**

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

Background Papers:

Ref: SH

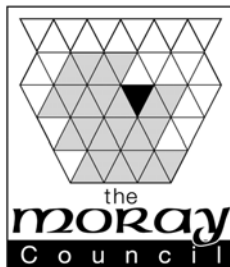
Signature:

Date: 13 August 2014

Designation: Legal Services Manager (Litigation & Licensing), Depute Clerk to the Board

Name: Margaret Forrest

## Appendix I



## The Moray Licensing Board Scheme of Delegation for the Licensing (Scotland) Act 2005

Delegation of functions is provided for within paragraph 10 of Schedule 1 to the Licensing (Scotland) Act 2005 as follows:

A Licensing Board may authorise (whether generally or specifically) any member, committee, clerk or member of staff to exercise on behalf of the Board any of the Board's functions under the Act, other than the following:

- (a) determining the Board's policy for the purposes of a licensing policy statement or supplementary licensing policy statement,
- (b) determining, for the purposes of any such statement, whether there is overprovision of licensed premises, or licensed premises of any particular description, in any locality,
- (c) determining a premises licence application,
- (d) determining a premises licence variation application where the variation sought is not a minor variation,
- (e) determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence,
- (f) determining a personal licence application or renewal application where the applicant has been convicted of a relevant offence or a foreign offence,
- (g) conducting a hearing under this Act (including the resulting steps like issuing a warning, suspending or revoking the premises licence, varying the licence, suspending, revoking or endorsing the personal licence)
- (h) making a closure order,
- (i) refusing an application for confirmation of a provisional premises licence.
- (j) granting/refusing an occasional licence application where there is a notice of objection or representations in relation to the application, or a notice from the appropriate chief constable recommending refusal of the application.

Therefore the above functions will be undertaken by the Moray Licensing Board. All other functions may be carried out by any member of the Board, committee of the Board, clerk or member of staff. In particular the following will apply:

	<b>Nature of Application</b>	<b>Function</b>	<b>Discharged By</b>
1	Premises licences	Determining a premises licence application subject to the proviso that the Clerk may submit lists of certain pre-approved applications to the Board for determination.	Board or a sub committee
2	Premises licence minor variation	Dealing with an application under section 29 of the 2005 Act for a minor variation such as is described in subsection (6)(c) of that section including any variation of the information	Clerk or person appointed to assist the Clerk

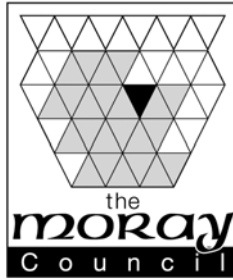
		contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager)	
3	Premises licence variation	Determining whether to cite an Applicant to a hearing for a premises licence variation application where the variation is not a minor variation	Clerk or person appointed to assist the Clerk
4	Premises licence transfer	Determining an application under section 33 or 34 of the 2005 Act being any application to transfer a licence (other than such an application as is described in paragraph 10(2)(e) of schedule 1 to the Act which is determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence)	Clerk or person appointed to assist the Clerk
5	Premises licence confirmation	Confirm a provisional premises licence under section 46	Clerk or person appointed to assist the Clerk
6	Premises licence review proposal	Whether to make a premises licence review proposal under section 37(1)	Clerk or person appointed to assist the Clerk
7	Premises licence reviews	To exercise the powers under section 38(5) and (6) for the purpose of a review hearing to obtain further information, request any person to attend to provide information and/or request production of any document at a review hearing	Clerk or person appointed to assist the Clerk
8	Premises licence production	To exercise the power under section 49(3) to require a premises licence holder to produce the premises licence	Clerk or person appointed to assist the Clerk
9	Premises licence fees	Determining what category a premises falls within in terms of the fees Regulations	Clerk or person appointed to assist the Clerk
10	Personal licences	Determining a personal licence application including renewal applications where the applicant has been convicted of a relevant offence or a foreign offence	Board or a sub committee
11	Personal licences	Determine a personal licence application including renewal applications where the applicant has not been convicted of a relevant or foreign offence	Clerk or person appointed to assist the Clerk
12	Personal licences	Revoke a personal licence under the mandatory provision in section 87(3) if the licence holder fails to comply with the provisions as regards training in section 87(1)	Clerk or person appointed to assist the Clerk
13	Occasional Licences	Determine whether to permit applications for occasional licences to be considered at short notice (i.e. being a period less than 21 days but not less than 24 hours).	Convenor of the Board, whom failing the Vice Convenor, whom failing any other member of the Licensing Board.

14	Occasional Licences	Accept an occasional licence application at short notice (i.e. a period less than 21 days but not less than 24 hours) where the application is in respect of a funeral tea, wake or similar.	Clerk or person appointed to assist the Clerk
15	Occasional licences	Grant an occasional licence application where there is notice of objection or representation and or notice from the chief constable recommending refusal in relation to the application	Convenor and Vice Convenor of the Board acting in agreement, failing which reference will be made to a third member for a majority decision of two out of three. If the Convenor and/or Vice Convenor is not available then reference can be made to any other member of the Licensing Board.,
16	Occasional licences	Grant an occasional licence application where there is no notice of objection or representation and no notice from the chief constable recommending refusal in relation to the application (or where any such objection, representation or notice has been withdrawn)	Clerk or person appointed to assist the Clerk
17	Occasional Licence conditions	To impose conditions under section 60 in respect of an occasional as necessary or expedient for the purpose of any licensing objective	Clerk or person appointed to assist the Clerk
18	Extended Hours	Determine whether to permit applications for licences for extended hours to be considered at short notice (i.e. being a period less than 21 days but not less than 24 hours).	Convenor of the Board, whom failing the Vice Convenor, whom failing any other member of the Licensing Board.
19	Extended Hours	Accept and application for extended hours at short notice (i.e. a period less than 21 days but not less than 24 hours) where the application is in respect of a funeral tea, wake or similar.	Clerk or person appointed to assist the Clerk
20	Extended hours	Grant an extended hours application where there is notice of objection or representation and or notice from the chief constable recommending refusal in relation to the application	Convenor and Vice Convenor of the Board acting in agreement, failing which



			reference will be made to a third member for a majority decision of two out of three. If the Convenor and/or Vice Convenor is not available then reference can be made to any other member of the Licensing Board.,
21	Extended hours	Grant an extended hours application where there is no notice of objection from the chief constable under section 69(2) and no adverse report from the LSO under section 69(3)	Clerk or person appointed to assist the Clerk
22	Power to Relieve Procedural Errors	The power under section 135 to relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if the failure is due to mistake, oversight or other excusable cause, and it is considered appropriate in all the circumstance to relieve the failure.	Clerk or person appointed to assist the Clerk

All powers that are delegated are subject to the proviso that where it appears to the clerk or person appointed to assist the clerk that, as regards a particular case, it is appropriate that a function specified above be discharged by the Board or by a member or particular members of the Board, that officer is to remit the case appropriately.



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**REPORT TO: MORAY LICENSING BOARD ON 21 AUGUST 2014**

**SUBJECT: APPOINTMENT OF DEPUTE CLERKS**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 The reason for this report is to request the formal appointment of further Depute Clerks to the Board.

**2. RECOMMENDATION**

- 2.1 **It is recommended that the Board appoint two further Depute Clerks to assist the provision of the Licensing Service, as detailed at 3.2 below.**

**3. BACKGROUND**

- 3.1 There are currently three Depute Clerks – Mrs Margaret Forrest, Legal Services Manager (Litigation and Licensing); Ms Morag Smith, Senior Solicitor (Litigation and Licensing); and Mr Sean Hoath, Senior Solicitor (Litigation and Licensing).
- 3.2 In order to assist in advising the Licensing Board and administration of the same the Clerk proposes that two further Depute Clerks are appointed from within the Litigation and Licensing Section, namely Ms Hilary Locker, Solicitor and Ms Sonia Campbell, Solicitor.

**4. SUMMARY OF IMPLICATIONS**

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

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growing economy. Regulation of the sale of alcohol contributes to a safer community. Provision for appropriate staff and support will assist the Board in this.

**(b) Policy and Legal**

None arising directly from this report.

**(c) Financial implications**

None.

**(d) Risk Implications**

The appointment of additional staff to support the Clerk should serve to maximise service delivery.

**(e) Staffing Implications**

Appointments are being proposed from within existing staff resources.

**(f) Property**

None.

**(g) Equalities**

None.

**(h) Consultations**

None.

**5. CONCLUSION**

**5.1 It is proposed that the Board appoint two further Depute Clerks to assist the provision of the Licensing Service.**

Author of Report: Margaret Forrest, Legal Services Manager (Litigation & Licensing)

Background Papers:

Ref:

Signature:

Date : 13 August 2014

Designation: Legal Services Manager (Litigation & Licensing), Depute Clerk to the Board

Name: Margaret Forrest