

THE MORAY LICENSING BOARD

THURSDAY 11 DECEMBER 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 11 December 2014 at 10.00am.

A. McEachan

Alasdair McEachan
CLERK

3 December 2014

BUSINESS

1. Prior Minutes
 - (i) Minutes of the Meeting held on 9 October 2014 (copy attached)
 - (ii) Minutes of the Special Meeting held on 1 December 2014 (copy attached)

The Licencing (Scotland) Act 2005

2. Applications Section– Appendix 1
3. Premises Licence Review Hearing (Reference Number 1 of 2014) – Report by the Clerk (copy attached) – Report by the Clerk (copy attached)
4. Personal Licence Review Hearing Following Application for Review by the Chief Constable (Case Number 3 of 2014) – Report by the Clerk (copy attached)
5. Personal Licence Review Hearing Following Application for Review by the Chief Constable (Case Number 4 of 2014) – Report by the Clerk (copy attached)
6. Annual Fee Review of Licensing Fees– Report by the Clerk (copy attached)

CLERK:	Alasdair McEachan
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THE MORAY LICENSING BOARD

SEDERUNT

COUNCILLOR J ALLAN

COUNCILLOR G COWIE

COUNCILLOR S CREE

COUNCILLOR M HOWE

COUNCILLOR A MCLEAN

COUNCILLOR M McCONACHIE

COUNCILLOR R H SHEPHERD

COUNCILLOR C TUKE

CLERK TO THE BOARD: Mr A McEachan

APPENDIX 1

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

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

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

RED

Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. 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

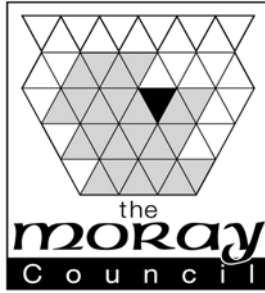
Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members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

MORAY LICENSING BOARD

MEETING, 11 December 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date Received	Comments
New Premises	Windswept Brewing Co Ltd Unit 13 B Coulardbank Industrial Estate Lossiemouth Moray IV31 6NG	Windswept Brewing Co Ltd	6 October 2014	Off sales 10am to 10pm each day. Site visited. No objts/rebs
Variation (Major)	Red Lion 2-6 Tolbooth Street Forres IV36 1PH	Greene King Brewing & Retailing Ltd	24 September 2014	Variation for off sales at another area on site. Site visited. No objts/rebs
Variation (Major)	Craigellachie Distillery Hill Street Aberlour AB38 9ST	John Dewar & Sons Ltd	6 November 2014	Variation to provide restaurant facilities and amend terms and times for C&YP Site visited No objts/rebs



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REPORT TO: THE MORAY LICENSING BOARD ON 11TH DECEMBER 2014

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PREMISES LICENCE
REVIEW HEARING (REFERENCE NUMBER 1 OF 2014)**

BY: CLERK TO THE BOARD

1. Reason for Report

1.1 The Licensing (Scotland) Act 2005 at section 36 provides that anyone can request a review of a premises licence.

1.2 This report is to notify the Board:

1.2.1 That an application for a review of a particular premises licence has been submitted by the Chief Constable's representative. A copy of the application for review has been circulated separately.

1.2.2 The Board may reject a review application if the board considers the application:

1.2.2.1 Is frivolous or vexatious.

1.2.2.2 Does not disclose any matter relevant to any ground for review.

1.2.3 That, where the application is not rejected, section 38(1) of the Licensing (Scotland) Act 2005 requires the Board to hold a review hearing to consider and determine the review application.

1.2.4 That, if satisfied at the hearing that a ground for review is established, The Board is to proceed to determine whether any further steps should be taken in respect of the premises licence.

1.2.5 That if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board must also hold a hearing to review the personal licence.

2. Recommendations

It is recommended that the Board:-

- 2.1 Note the application for review by the Chief Constable and the initial requirement for the Board to determine if it considers the application to be frivolous or vexatious or does not disclose any matter relevant to a ground for review;**
- 2.2 Note the requirement in section 38 to hold a review hearing, following the application by the Chief Constable, if the Board determines that any matter relevant to a ground for review is disclosed;**
- 2.3 Note that details of the premises licence review application have been passed to the licence holder and the Licensing Standards Officer (LSO) and the LSO has reported on the same;**
- 2.4 Hear from the parties, note any recommendations from the Chief Constable, take the LSO's report into account, consider the matter and determine whether a ground for review is established and, if so, determine whether one of the possible steps set out in paragraph 3.10 is necessary.**
- 2.5 Note the requirement that if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board must also hold a further hearing to review his/her personal licence.**

3. Background

- 3.1 A request for review from the Chief Constable was received on 4 November 2014. The Chief Constable states that the grounds for review are relevant to the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance.**
- 3.2 The grounds for review, as set out in the Licensing (Scotland) Act 2005 at section 36(2), are as follows:**
 - 3.2.1. That one or more of the conditions to which the premises licence is subject has been breached; or**
 - 3.2.2. Any other ground relevant to one or more of the licensing objectives.**
- 3.3 At their meeting of 14 June 2012 the Licensing Board reviewed the licence and took the decision to vary the premises licence to a terminal hour of 2300 hours for a period of 6 months (paragraph 7 of the minute of 14 June 2012 refers).**

- 3.4 It should be noted that in this case the Chief Constable's view, if the Board finds that ground(s) for review are established, is that nothing less than a suspension of the premises licence for such a period as the Board sees fit as both proportionate and appropriate.
- 3.5 In addition the Chief Constable recommends that in the event the Board makes a finding as described in section 2.5 above then the Board should proceed to revoke the personal licence of the personal licence holder who is also currently the designated premises manager. However Case 3 of 2014 also refers and it should be noted that a separate application for review of the personal licence has been submitted..
- 3.6 Section 36(6) provides that the Board may reject a premises licence review application if it considers the application to be frivolous or vexatious or if it does not disclose any matter relevant to a ground for review.
- 3.7 By virtue of section 38(1), if the review application is not rejected, then the Board must hold a hearing for the purposes of considering and determining the review application.
- 3.8 Where a hearing of a review application is to be held the Board must give notice of the hearing to the applicant, the licence holder and the Licensing Standards officer (LSO). Notices were issued on the 7 November 2014 and, in relation to the licence holder and LSO, notices were accompanied by a copy of the review application.
- 3.9 The LSO is required to prepare and submit a report to the hearing and a copy of that report has been circulated to members. The Board must take the report into account at the hearing.
- 3.10 The Board may also obtain further information from such persons, and in such manner, as the Board thinks fit, and take the information into account. The Board may also take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review application under consideration.
- 3.11 At the hearing the Licensing Board may, after giving the parties an opportunity to be heard and having regard to both the recommendation contained in the Chief Constable's application and the report of the LSO and if satisfied that a ground for review is established take such of the following steps that the Board considers necessary or appropriate for the purposes of any of the licensing objectives:
 - 3.11.1. Issue a written warning to the licence holder;
 - 3.11.2. Make a variation of the licence, which may be permanent or for such period as the Board may determine;
 - 3.11.3. Suspend the licence for such period as the Board may determine;
 - 3.11.4. Revoke the licence.

- 3.12 Any steps taken must also be reasonable and proportionate, having regard to all the circumstances of the case, as well as necessary or appropriate for the purposes of the licensing objectives.
- 3.13 The licensing objectives are set in out in paragraph 4(a).
- 3.14 Where the Board has made a variation or suspended the licence the Board may, on the application of the licence holder, and if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.
- 3.15 In accordance with section 84 where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding that any personal licence holder who is or was working in the licensed premises acted in a manner which was inconsistent with any of the licensing objectives the Board must hold a further hearing to review the personal licence.
- 3.16 The personal licence holder in question was also invited to attend this meeting by a letter of the 7 November 2014 in relation to a section 84A review application. The personal licence holder should be given the opportunity to listen to the evidence presented in the review of the premises licence and the Board should then hear from the personal licence holder before making any finding as referred to in paragraph 3.15.
- 3.17 Should the Board then make such a finding as referred to above then the Board must hold a further hearing to review the personal licence.
- 3.18 At a hearing to review the personal licence, after giving the licence holder and such other persons as the Board considers 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, The Board may make one of the following orders:
- 3.18.1. An order revoking the personal licence;
 - 3.18.2. An order suspending the personal licence for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.18.3. An order endorsing the personal licence.
- 3.19 Any order made must be reasonable and proportionate, having regard to all the circumstances of the case, as well as necessary for the purposes of the licensing objectives.
- 3.20 The endorsing of personal licences is system within the Licensing (Scotland) Act 2005 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.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

Taking account of allegations made, the Board is to have regard to all the circumstances and decide whether any of the licensing objectives have been compromised and whether any potential risk identified then justifies further intervention as necessary and appropriate for the purpose of the objectives.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

In considering this matter the Licensing Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In particular:

Art 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Art 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Art 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim.

A legitimate aim must be a real consideration that is legal and not discriminatory.

Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the subject's circumstances.

(h) Consultations

Consultation is not required.

5. Conclusion

- 5.1 It is proposed that the Board note the application for review by the Chief Constable and determine if it considers the application to be frivolous or vexatious or does not disclose any matter relevant to a ground for review;**
- 5.2 It is proposed that the Board hold a review hearing if the application is not rejected, hear from the parties, take account of the LSO's report and the recommendation by the Chief Constable, consider the matter and determine whether a ground for review is established and, if so, determine whether one of the possible steps set out in paragraph 3.10 is necessary for any of the licensing objectives, reasonable and proportionate.**

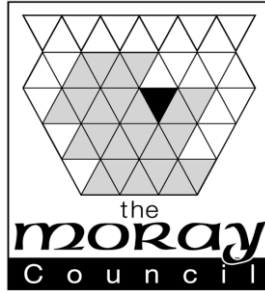
- 5.3 It is proposed that if during the course of the premises licence review, the Board makes a finding that a personal licence holder, who is or was working in the premises, acted in a manner inconsistent with the licensing objectives then the Board hold a further hearing to review his/her personal licence. The Board should then hear from the parties, take account of any recommendation by the Chief Constable and determine if one of the orders in paragraph 3.18 is necessary for the purpose of any of the licensing objectives, reasonable and proportionate.**

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

A. McEachan

Signature

Designation Acting Head of Legal and Democratic Services, Clerk to the Board
Name Alasdair McEachan



ITEM: 4

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REPORT TO: THE MORAY LICENSING BOARD ON 11 DECEMBER 2014

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 3 OF 2014)

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 3 of 2014) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder, securing public safety, preventing public nuisance and protecting and improving public health;

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 3.5 is necessary for the purposes of any of the licensing objectives;

3. BACKGROUND

- 3.1 On the 4 November 2014 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 At their meeting of 7 March 2013, the Licensing Board reviewed this personal licence and endorsed it in terms of the licensing objectives of preventing crime and disorder, securing public safety, preventing public nuisance and protecting children from harm (paragraph 3 of the minute of 7 March 2013 refers).
- 3.4 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.
- 3.5 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:
- 3.5.1. revoking;
 - 3.5.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.5.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.6 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

In considering this matter the Licensing Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In particular:

Art 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Art 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Art 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim.

A legitimate aim must be a real consideration that is legal and not discriminatory. Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the subject's circumstances.

(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 3.5 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 Acting Head of Legal and Democratic Services, Clerk to the Board

Name Alasdair McEachan



ITEM: 5

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REPORT TO: THE MORAY LICENSING BOARD ON 11 DECEMBER 2014

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 4 OF 2014)

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 2014) has acted in a manner which is inconsistent with the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance;

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 25 November 2014 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

In considering this matter the Licensing Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In particular:

Art 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Art 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Art 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim.

A legitimate aim must be a real consideration that is legal and not discriminatory. Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the subject's circumstances.

(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

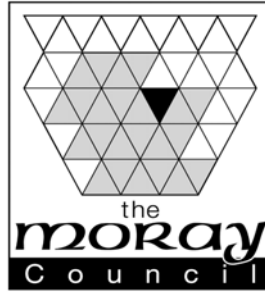
Background Papers: There are no background papers

Ref: SAH/TT



Signature

Designation Acting Head of Legal and Democratic Services, Clerk to the Board
Name Alasdair McEachan



REPORT TO: THE MORAY LICENSING BOARD 11 DECEMBER 2014

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – ANNUAL REVIEW OF LICENSING FEES

BY: CLERK TO THE BOARD

1. Reason for Report

1.1 This report is to:

- 1.1.1 Update the Board on the overall amounts received by way of licensing fees;
- 1.1.2 Compare that income figure as against overall expenditure;
- 1.1.3 Make predictions in respect of likely future income and expenditure;
- 1.1.4 Determine whether the Board wishes to undertake a further review of licensing fees as a result.
- 1.1.5 Advise the Board of business transacted.

2. Recommendations

It is recommended that the Board:-

2.1 Note the contents of the report including:

2.1.1. The current fee scale at Appendix I;

2.1.2. The review of income and expenditure data both to date and for the future at Appendix II and at paragraph 4 below;

2.1.3. The business transacted at Appendix III

2.2. Either agree that no action is required in respect of altering the current fee structure at this time (recommended option); OR

2.3. Consider whether the Board wishes to revise the current fee structure and either agree changes or proceed to instruct the policy sub group on proposals for change (in accordance with para 5.3 below) as the Board sees fit.

3. Background

- 3.1 The Licensing (Fees) (Scotland) Regulations of 2007 (referred to here as the “Fees Regulations”) were made in accordance with the Licensing (Scotland) Act 2005. The Fees Regulations require each Licensing Board to set certain fees in respect of various applications under the Licensing (Scotland) Act 2005. This includes application and annual premises licence fees that are set by Boards but within overall maxima prescribed by the Scottish Government.
- 3.2 The current fee scale is attached at **Appendix I**. It came into force on the 1st August 2010.
- 3.3 The current scale sets the premises licence application and annual fees at the maximum level prescribed by the Scottish Government, which means that those fees cannot be increased but they could be reduced.
- 3.4 In accordance with the Fees Regulations, the fee structure was designed around the principle that licensing was to become, as far as possible, self funding and that each Board was to broadly recover, through licensing fees, the overall cost to the Council and Board of providing licensing functions.
- 3.5 It is also clear that the expenses to be recovered are not limited to Licensing Board expenses. Expenses include all those incurred by both the Board and the Moray Council in administering the Act in general. This includes expenses for all Board and Council licensing administration including that from other departments of the Council contributing to the licensing procedure.

4. Income and Expenditure

- 4.1 A review of licensing fees is undertaken annually. The Clerk last reported on a review of licensing fees to the Board on the 15th August 2013 at which time the Board agreed no change was required to the fee structure and to next review fees in October/November 2014 (Item 8 of minutes for the 20th September 2012 refers).
- 4.2 The current review was timed to coincide with a then planned review of licensing fees by the Scottish Government. That process has started but not concluded. There are no draft Regulations or proposals from the Scottish Government yet in place. Nevertheless a further review of the Board’s own position was considered prudent.
- 4.3 With the assistance of officers in the Finance department, the Clerk has now collated income and expenditure figures for the financial years up to the 31st March 2014 as well as projected income and expenditure for the financial period 1st April 2014 to 31st March 2015.
- 4.4 The figures are summarised at **Appendix II**.
- 4.5 Examination of the figures reveals the following indications:

- 4.4.1 Since the last review of licensing fees in 2012 there has been a reduction in the level of recharges following a further review of the time legal and other staff spend in providing and supporting the licensing system;
- 4.4.2 There has been a reduction in the level of recharges for the cost of Licensing Standards following the loss of the full time LSO post;
- 4.4.3 There has been an adjustment of income levels for this year and for previous years. This has been to remove income attributable to gambling premises licences and other gambling permissions. This income is not properly attributable to the calculation of fees for alcohol licences and should not have been included previously.
- 4.4.3 The resultant drop in the level of expenses has resulted in a notional surplus of £47,740 for the financial year 2013/2014;
- 4.4.4 Individual fluctuations between financial years can be viewed in the light of the figures for previous years with a view to ensuring that overall income broadly equates to expenditure. This is complicated by the fact that the financial year is a different period to the licensing fee year, with the latter running from the 1st October to the 30th September. The due date for licence fees is prescribed by statute and cannot be changed.
- 4.4.5 In some years income exceeded expenditure but in others income has fallen short of expenditure. Aggregating the figures since the start of transition overall income has fallen short of expenditure by £15,266. A reduction in the cost of administering licences is anticipated to result in the prior years' cumulative shortfall of income being recouped in the course of 2014/15;
- 4.4.6 The income for the past few years has been quite consistent. It is therefore anticipated that the income for 2014/2015 will be of a similar level. This is estimated at £131,000.00. However it should be borne in mind that overall numbers of applications, particularly major variations and personal licences are reducing as time goes on.
- 4.4.7 It appears likely that income will exceed expenditure in 2014/2015. If the predicted surplus occurs, it will be the first time overall income exceeds overall expenditure under the Licensing (Scotland) Act 2005.
- 4.6 With the reduction in recharges, it would appear that income might exceed expenditure in future years although it should be noted that figures for both projected income and expenditure can only ever be estimates and may not be a true reflection of actual amounts. The estimates are based on historical data about income, expenditure and transactions.
- 4.7 The target is for income to be broadly in line with expenditure as set out in the Fees Regulations.

- 4.8 Should income exceed expenditure then consideration must be given to the possibility of reducing licensing fees.

5. Future Fee Structure

- 5.1 The first option is for the current fee structure to remain in place and no action be taken at present, other than monitoring. This is on the basis that the current, overall shortfall is still being recouped. At the time of the next review, if income continues to exceed expenditure then consideration should be given to reducing fees.
- 5.2 The first option is the recommended option. If this option is accepted then the Board previously agreed to review fees on an annual basis, which would make the next review due around July / August 2015. However the Board is asked to note that, given the ongoing fee review by the Scottish Government, as set out in paragraph 5.5 below, it may be necessary to adjust this timescale.
- 5.3 The second option, is for the Board instead to review the current fee structure now, and consider instructing the Policy Sub Group to:
- 5.3.1 Work with Officers on the task of balancing income and expenditure more closely for 2014/2015;
 - 5.3.2 Settle on proposals for a revised fee structure;
 - 5.3.3 Decide whether and how the same should be issued for consultation;
 - 5.3.4 Proceed with and consider the results of any consultation and revise proposals if required;
 - 5.3.5 Bring final draft proposals back to the Board for approval and implementation.
- 5.4 In respect of any review it should be noted that where, in accordance with legislation, fees are set by the Board there is no requirement to consult upon those fees before any variation is brought into effect. The only requirement is that a fee may not be varied so that the variation comes into effect less than a year after the date with effect from which the fee in question was first determined or last varied. As the fees were last varied in August 2010, changes could be brought in at any time from now on but if changes are made now then fees could not be varied again before the expiry of another year.
- 5.5 Finally, it should also be noted that the Scottish Government is reviewing licensing fees and exploring options for a possible change to the fee structure. This is still in the information gathering stage and no decisions have yet been made, despite the previously indicated timescale. Recommendations in this report proceed on the assumption of the same statutory fee structure for the financial year 2014/2015.

6 **SUMMARY OF IMPLICATIONS**

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

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

(b) **Policy and Legal**

Policy and Legal implications have been explained above.

(c) **Financial implications**

Financial implications have been explained above. A reduction in the cost of administering licences is anticipated to result in the prior years' cumulative shortfall of income being recouped in the course of 2014/15.

(d) **Risk Implications**

As explained above, the projected figures for future income are only estimates. Accordingly there is a risk that the actual income differs from the projected income.

(e) **Staffing Implications**

Preparation of fee projections has involved considerable staff time and fees will be reviewed annually. No additional resources are required. It is anticipated that going forward fee income will ensure full cost recovery in terms of providing the licensing function.

(f) **Property**

None.

(g) **Equalities**

In considering this matter the Board should have regard to issues of equality and the subject's (licence holders) rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In the event that the Board chooses to pursue option 2 under para 5.3 above then it should be noted that as part of the fee review process it may be necessary to undertake an equalities and human rights impact assessment.

The Board should have regard to all the circumstances.

(h) Consultations

As far as possible, the figures within this report have been prepared in consultation with Lorraine Paisey, Principal Accountant of the Council's Finance Department.

7 Conclusion

8.1 It is proposed that the Board note the contents of this report and decide on whether further action is required.

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

Background Papers:

Ref: SH

A. McEachan

Signature:

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

Name: Alasdair McEachan

Fee Scale for the Moray Licensing Board

Licensing (Scotland) Act 2005

Category	Rateable Value	Application fee	Annual fee
Category 1	nil rateable value or within certain defined exemptions	200	180
Category 2	rateable value between £1 and £11,500	800	220
Category 3	rateable value between £11,501 and £35,000	1100	280
Category 4	rateable value between £35,001 and £70,000	1300	500
Category 5	rateable value between £70,001 and £140,000	1700	700
Category 6	rateable value over £140,000	2000	900

Type of Application	Fee - £ Categories 1-3	Fee - £ Categories 4-6
Any variation of a premises licence that is not within the definition of the prescribed fees below i.e. that is a major variation	350	500
Application by the licence holder to transfer and vary a licence	375 for major variations and 145 for minor ones	600 for major variations and 220 for minor ones
Application by the licence holder to transfer a licence (no variation)	125	200
Application by another person to transfer and vary a licence	450 for major variations and 220 for minor ones	675 for major variations and 295 for minor ones
Application by another person to transfer a licence (no variation)	200	275
Application for a provisional premises licence £Variable (to be the same as a category 1 premises)	180	180
Application for confirmation of a provisional premises licence £Variable (this will vary between premises. The confirmation fee will be the fee that would have been payable for a premises licence application (based on the rateable value as above) LESS the amount paid on application for the provisional premises licence as a category 1)	Variable	Variable

Application for a temporary premises licence	200	200
Application for a replacement personal licence	25	25
Application for a replacement premises licence	40	40

Type of Application	Fee - £
An application to vary a premises licence where the variation sought is the substitution of a premises manager and any other variation is a minor variation	31
An application to vary a premises licence where the variation sought is a minor variation and there is no substitution of the premises manager	20
Application for an occasional licence	10
Application for extended hours	10
Application for a personal licence	50

Gambling Act 2005

Gambling Premises

Classes of premises licence	Application fee in respect of provisional statement premises	Fee for – (a) non-conversion application in respect of other premises; or (b) application for provisional statement	Annual fee	First annual fee following application	Fee for application to vary licence	Fee for (a) application to transfer or (b) reinstate a licence
Regional casino premises licence	£6,000	£11,250	£11,250	£8,440	£5,625	£4,880
Large casino premises licence	£3,750	£7,500	£7,500	£5,620	£3,750	£1,600
Small casino premises licence	£2,250	£6,000	£3,750	£2,810	£3,000	£1,350
Converted casino premises licence			£2,550		£1,500	£1,000
Bingo premises licence	£840	£2,450	£700	£525	£1,200	£840
Adult gaming centre premises licence	£840	£1,400	£700	£525	£700	£840
Betting premises (track) licence	£660	£1,750	£1,000	£750	£870	£660
Family entertainment centre premises licence	£660	£1,400	£500	£375	£700	£660
Betting premises (other) licence	£840	£2,100	£400	£300	£1,050	£840

Other Gambling Fees

Type of Application	Fee - £
Application for a copy of a licence	25
Small Society Lottery Registration (new)	40
Small Society Lottery Annual fee	20
Notification of Intention to make 1 or 2 Category C / D Gaming Machines Available (Licensed Premises)	50
Licensed Premises Gaming Machine Permit (existing operator)	100
Licensed Premises Gaming Machine Permit (new)	150
Licensed Premises Gaming Machine Permit Annual Fee	50
Licensed Premises Gaming Machine Permit Variation Fee	100
Licensed Premises Gaming Machine Permit Transfer	25
Licensed Premises Gaming Machine Permit Change of Name	25
Club Gaming Permit or Club Machine Permit (existing operator)	100
Club Gaming Permit or Club Machine Permit (new)	200
Club Gaming/Machine Permit Annual Fee	50
Club Gaming/Machine Permit Variation Fee	100
Club Gaming/Machine Permit Renewal Fee	200
Unlicensed Family Entertainment Centre (uFEC) Gaming Machine Permit (new)	300
Unlicensed Family Entertainment Centre (uFEC) Gaming Machine Permit (renewal)	300
Prize Gaming Permit	300
Application for a copy of a Permit	15
Temporary Use Notice	350
Application for a copy of a Temporary Use Notice	25

Licensing Board Income & Expenditure

Period	Transition 01/02/2008 – 01/09/2009	01/09/2009 – 31/03/2010	01/04/2010 – 31/03/2011	01/04/2011 – 31/03/2012	01/04/2012 – 31/03/2013	01/04/2013 – 31/03/2014	CUMULATIVE TOTAL TO 31.3.14	ESTIMATED 01/04/2014 – 31/03/2015
Income	£401,476		£137,544	£128,657	£122,866	£131,506	£922,049	£131,000
Expenditure	£389,252	£75,587	£129,828	£147,612	£111,270	£83,766	£937,315	£96,429
Surplus/(Shortfall)	-£63,363		£7,716	-£18,955	£11,596	£47,740	-£15,266	£34,571