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## THE MORAY LICENSING BOARD

THURSDAY 22 JANUARY 2015

**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 22 January 2015 at 10.00am.

*A. McEachan*

Alasdair McEachan  
CLERK

14 January 2015

### BUSINESS

1. Prior Minutes
  - (i) Minutes of the Meeting held on 11 December 2014 (copy attached)

### The Licensing (Scotland) Act 2005

2. Applications Section– Appendix 1
3. Licensing (Scotland) Act 2005 – Personal Licence Review Hearing Following Application for Review by the Chief Constable (Case Number 4 of 2014) – Report by the Clerk (copy attached)
4. Review of Premise Licences Various Hearings Following the Making of Premises Licence Review Proposals – 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 J DIVERS****COUNCILLOR M HOWE****COUNCILLOR M McCONACHIE****COUNCILLOR A MCLEAN****COUNCILLOR R H SHEPHERD****COUNCILLOR C TUKE****CLERK TO THE BOARD: M 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

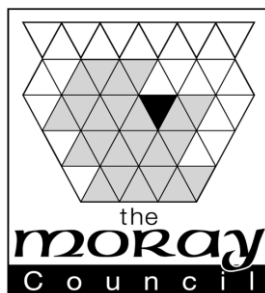
Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members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

## MORAY LICENSING BOARD

MEETING, 22 January 2015 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

### Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date Received	Comments
Transfer (Holder)	Clifton Hotel 5 Clifton Road Lossiemouth IV31 6DJ		12 December 2014	Relevant offence disclosed by a connected person must be heard by the Board. Applicant and connected person cited to attend.



ITEM: 3

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**REPORT TO: THE MORAY LICENSING BOARD ON 22 JANUARY 2015**

**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 3.5 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 At their meeting of 11 December 2014 the Board agreed to defer the hearing for attendance. The Depute Clerk had received notification that the licence holder would be unable to attend. (para 5 of the minute refers)
- 3.3 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.

Since the last hearing the Chief Constable has provided a letter of update with further information that is stated to be relevant to conduct and a copy of that letter has been forwarded to the licence holder and separately circulated to members.

- 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

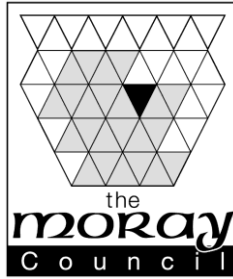
Background Papers: There are no background papers

Ref: SAH/TT

Signature A. McEachan

Date 14 January 2015

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



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**REPORT TO: THE MORAY LICENSING BOARD 22 JANUARY 2015**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES LICENCES VARIOUS HEARINGS FOLLOWING THE MAKING OF PREMISES LICENCE REVIEW PROPOSALS**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 To ask the Board to conduct a hearing to consider and determine the premises licence review proposal in respect of each of the premises listed in the schedule circulated to members separately.

**2. RECOMMENDATION**

- 2.1 **It is recommended that the Board consider and determine the premises licence review proposals having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005.**

**3. BACKGROUND**

- 3.1 On 22 July 2010 (paragraph 4 of the minute refers) the Board delegated authority to the Clerk to make a premises licence review proposal in terms of s.37(1) of the Act for any premises where the annual fee remained outstanding for a period of six weeks after the due date.
- 3.2 By that delegated authority a premises licence review proposal in respect of each of the premises listed in the schedule has been made. Notice was sent to all licence holders concerned on the 23 December 2014. The Depute Clerk will notify the Board and withdraw the proposal in respect of any licence fee that is paid prior to the date of the hearing.
- 3.3 The review proposal must state the grounds for review. Section 36(3) of the Act states the grounds for review, 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.
- 3.4 A review proposal having been made, the Board is obliged to hold a hearing, in terms of s.38(1), to consider and determine the proposal.
- 3.5 In the present cases, grounds for review are made out both in terms of ss.36(3) (a) and (b) of the Act.

- 3.6 By the failure to pay the annual licence fees which became due on 1 October 2014, the licence holders concerned are breaching a mandatory condition of the premises licence, which condition is imposed by paragraph 10(2) of Schedule 3 of the Act.
- 3.7 In addition, by the failure to pay the annual licence fees, the licence holders concerned have deprived the Board of revenue and this reduces the Board's ability to promote the licensing objectives.
- 3.8 At the review hearing section 39(2) confers on the Board the power to:
- 3.8.1 Issue a written warning;
  - 3.8.2 Vary the licence;
  - 3.8.3 Suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
  - 3.8.4 Revoke the licence.

#### **4. SUMMARY OF 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
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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**

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**

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**  
None required.

**5. CONCLUSION**

- 5.1 The Board should consider and determine the premises licence review proposals in respect of each premises listed in the schedule circulated separately to members having regard to the powers available to the Board under s.39(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 A. McEachan

Date 14 January 2015

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