

MORAY LICENSING BOARD

THURSDAY 11 JUNE 2015

SUPPLEMENTARY AGENDA

The undernoted report has been added to the Agenda for the meeting of The Moray Licensing Board to be held on Thursday 11 June 2015 at 10.00am.

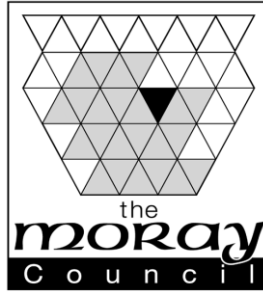
Alasdair McEachan
CLERK

9 June 2015

NOTE REFERRED TO:-

[AGENDA SECTION]

5. Licensing (Scotland) Act 2005 – Personal Licence Review Hearing Following Application For Review by the Chief Constable (Case Number 1 of 2015) - Report by Clerk to the Board.



REPORT TO: THE MORAY LICENSING BOARD ON

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE REVIEW HEARING FOLLOWING APPLICATION FOR REVIEW BY THE CHIEF CONSTABLE (CASE NUMBER 1 OF 2015)

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 1 of 2015) 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 27 April 2015 the Clerk received a report under s 84A from the Chief Constable.
- 3.2 A copy of the report referred to in paragraph 3.2 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